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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 24, 2022
Sent via email

Governor's Office of Planning & Research

OCT 25 2022

STATE CLEARINGHOUSE

Nick Melloni
Senior Planner
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260

Refuge Specific Plan (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2022100013

Dear Mr. Melloni:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Palm Desert for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA guidelines¹.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Refuge Palm Desert, LLC

Objective: The project proposes the development of a residential community of up to 969 single-family and multi-family dwelling units on 106.4 acres at the southwest corner of Gerald Ford Drive and Rembrandt Parkway in the City of Palm Desert. The Project includes a variety of single- and multi-family housing products and densities, recreational amenities, open spaces, and pedestrian connectors.

The Project will require approval of the following items:

- Refuge Specific Plan
- Change of Zone, from Planned Residential to Refuge Specific Plan
- Tentative Tract Map (TTM) to subdivide the Project site into residential, open space, private street lots

Location: The proposed project is located in the central portion of the Coachella Valley within the corporate limits of the City of Palm Desert south of Gerald Ford Drive, east of Monterey Avenue, and west of Portola Road. The Specific Plan area is comprised of three (3) parcels totaling approximately 106.4 acres, including Assessor Parcel Numbers (APN) 694-310-002, -003, and -006.

Timeframe: Project buildout is expected to occur over 6 years, from 2023 to 2029.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant. CDFW offers the comments and recommendations below to assist the City of Palm Desert in adequately

identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the MND does not adequately identify the Project's significant, or potentially significant, impacts on biological resources including rare, threatened, endangered, and other special-status species. A complete assessment of biological resources is needed to both inform appropriate avoidance, minimization, and mitigation actions and substantiate if impacts to biological resources are less than significant. Furthermore, the mitigation measures provided in the MND are not adequate to protect burrowing owl and nesting birds.

1) *Assessment and Analysis of Impacts to Biological Resources*

Assessment of Biological Resources

The field assessment for the 106.4-acre Project site, as documented in the Project's Biological Resources Assessment & MSHCP Compliance Report dated March 2022, was conducted on March 7, 2022, between 8:30 and 11:35 am by a single biologist and consisted of pedestrian transects *around* the entire Project site. CDFW is concerned that this field assessment, carried out as described in the MND, is inadequate in identifying baseline conditions regarding the presence of special-status species across the entire Project footprint because it did not include assessment within the Project site and was not conducted at the appropriate time of year to detect some special-status species. The City should obtain sufficient information on the baseline conditions for biological resources to assess what changes the Project will make to existing biological resources or determine if these changes are significant.

The MND indicates that vegetation communities within the Project site include stabilized and partially stabilized desert dunes, an important habitat type in Coachella Valley that supports a number of specialized and endemic animal and plant species that have adapted to this ecosystem. The Project's field assessment, documented in the Biological Resources Assessment, identified significant accumulations of blowsand (wind-deposited sediments) on the Project site. The Project site, despite being largely surrounded by development, continues to receive aeolian sand from the Whitewater River floodplain area located to the northwest. Given the size of the 106.4-acre Project site and the persistence of ecologically important dune habitat onsite, CDFW does not concur with the assumption made in the MND that no significant populations of special-status species should be anticipated onsite due to the site being isolated by surrounding development. CDFW recommends that the City of Palm Desert ensure that a complete inventory of special-status species and suitable habitat is conducted across the entire Project site to identify potentially significant impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and substantiate the

City's determination that the Project's impacts to biological resources are less than significant.

The MND identifies 32 special-status species that have the potential to occur onsite. To adequately identify baseline conditions for biological resources at the Project site, the MND needs to be updated to include a complete assessment of the flora and fauna *within* and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other special-status species. CDFW recommends that the City of Palm Desert revise the MND to include findings from the following assessment of biological resources:

A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a CVMSHCP Acceptable Biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

The inventory of special-status plants should include a thorough floristic-based assessment of special status plants and natural communities. See the "Special-Status Plants" section further below.

The MND identifies 32 special-status species that have the potential to occur onsite, including 13 plant species, two insects, and one mammal that are not Covered Species under the CVMSHCP. CDFW recommends that the MND is revised to discuss Project impacts to all special-status species that are detected within the Project site based on a complete inventory of biological resources, including both Covered Species and non-covered species under the CVMSHCP. For any special-status species identified onsite that are not Covered Species under the CVMSHCP, the MND should be revised to discuss how impacts to these species will be avoided and minimized and how any unavoidable impacts will be mitigated to a level that is less than significant. For Covered Species under the CVMSHCP, the MND needs to include an assessment of the impacts to the CVMSHCP as a result of this Project, and the City of Palm Desert needs to

demonstrate that proposed actions are consistent with the CVMSHCP (see “CVMSHCP Implementation” section below).

Absent a complete inventory of special-status species as described above, the City may not be able to determine if the Project’s impacts to biological resources are less than significant. If the City of Palm Desert forgoes the recommended complete inventory of biological resources and analysis of potentially significant impacts in a revised MND, CDFW recommends that the following mitigation measure be added to a revised MND:

Mitigation Measure [X]: Assessment of Biological Resources

Prior to construction or issuance of a grading permit, the Project applicant will submit to the City and CDFW the results of an assessment of biological resources as described below:

A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory shall address seasonal variations in use of the Project area and shall not be limited to resident species. Focused species-specific surveys, completed by a CVMSHCP Acceptable Biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary.

If any rare, threatened, endangered, and other sensitive species are observed within the Project footprint, the Project applicant will prepare a report for review and approval by the City of Palm Desert and CDFW detailing both actions to avoid and minimize impacts to the species and a mitigation strategy for all unavoidable impacts to these species that reduces Project impacts to a level that is less than significant.

Special-Status Plants

The MND identifies 18 special-status plant species that have the potential to occur onsite, including 13 plants that are not Covered Species under the CVMSHCP. Of these non-CVMSHCP covered, special-status species, flat-seeded spurge (*Euphorbia platysperma*) has a California Native Plant Society (CNPS) Rare Plant Rank 1B and is identified as having a high potential to occur onsite. Additionally, CNPS Rare Plant Rank 2B plants identified as having a moderate to high potential to occur onsite include gravel

milk-vetch (*Astragalus sabulonum*), Abram's spurge (*Euphorbia abramsiana*), Arizona spurge (*Euphorbia arizonica*), and slender cottonheads (*Nemacaulis denudate* var. *gracilis*). The California Rare Plant Rank 1B indicates plants that are rare, threatened, or endangered in California and elsewhere, and California Rare Plant Rank 2B indicates plants that are rare, threatened, or endangered in California but more common elsewhere. Impacts to these species must be analyzed during preparation of environmental documents relating to CEQA because they meet the definition of rare or endangered under CEQA Guidelines §15125 (c) and/or §15380. Also, Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*) is a federally endangered, CVMSHCP Covered Species identified as having a high potential to occur onsite.

The MND lacks a complete inventory of rare, threatened, endangered, and other sensitive plant species (see "Assessment of Biological Resources" section above). The City should have a complete inventory of special-status plant species within the Project site to analyze the Project's impacts to these plant species; evaluate if avoidance, minimization, and mitigation measures are appropriate; or determine if impacts are less than significant. To determine the Project's impacts on special-status plants and natural communities, CDFW recommends that a thorough, recent, floristic-based assessment of special-status plants is completed at the appropriate time(s) of year before the City of Palm Desert adopts the MND. The results of this assessment should be included in a revised MND. If any rare, threatened, endangered, or other sensitive plant species or natural communities are located within the Project site, CDFW recommends that the MND is revised to include appropriate avoidance, minimization, and mitigation measures.

CDFW recommends that the City of Palm Desert include in a revised MND Mitigation Measure BIO-[Y]: Special-Status Plant Species:

Mitigation Measure BIO-[Y]: Special-Status Plant Species

A thorough floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018 or most recent version) shall be performed by a qualified biologist at the appropriate time(s) of year and prior to commencing Project activities. Should any special status plants or natural communities be present in the Project area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site. If successful transplantation of perennial species is determined by a qualified restoration specialist, a receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize Project impacts. If these measures are implemented, monitoring of plant

populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.

CVMSHCP Implementation

Within the Inland Deserts Region, CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the CVMSHCP per Section 2800, *et seq.*, of the California Fish and Game Code on September 9, 2008. The CVMSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit. Compliance with approved habitat plans, such as the CVMSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the CVMSHCP as a result of this Project is necessary to address CEQA requirements. To obtain additional information regarding the CVMSHCP please go to: <http://www.cvmshcp.org/>.

The proposed Project occurs within the CVMSHCP Plan Area, is not located within a Conservation Area, and is subject to the provisions and policies of the CVMSHCP. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. Regardless of whether take of threatened and/or endangered species is obtained through the CVMSHCP or through a CESA ITP, the MND needs to address how the proposed Project will affect the conservation objectives of the CVMSHCP. Therefore, all surveys required by the CVMSHCP to determine consistency should be conducted and results included in the MND to adequately assess how the Project will impact the CVMSHCP.

Among other obligations under the CVMSHCP, the City of Palm Desert's is required to collect Local Development Mitigation Fees and transmit them to the Coachella Valley Conservation Commission. CDFW recommends that that following mitigation measure is added to a revised MND.

Mitigation Measure BIO-[Z]: CVMSHCP Compliance

Prior to construction and issuance of any grading permit, the City of Palm Desert shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee.

Burrowing Owl (*Athene cunicularia*)

Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Burrowing owl is a Covered Species under the CVMSHCP, which requires that avoidance and minimization measures be implemented for this species.

The MND indicates that the Project site includes suitable habitat for burrowing owl and that burrowing owls have the potential to occur onsite. CDFW is concerned that the field assessment conducted on March 7, 2022, was inadequate to detect presence of burrowing owls because it did not include assessment of the Project site (see "Assessment of Biological Resources" section above). CDFW recommends that the City of Palms Springs follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012 or most recent version); available for download from CDFW's website: <https://www.wildlife.ca.gov/conservation/survey-protocols>. The *Staff Report on Burrowing Owl Mitigation* specifies that project impact evaluations include the following steps: (1) habitat assessment, (2) surveys, and (3) an impact assessment. The three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance and minimization measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period.

CDFW recommends that the City include in a revised MND the findings of burrowing owl focused surveys, and, if needed, an impact assessment. This information helps inform appropriate avoidance and minimization measures for burrowing owls, substantiates a determination that impacts may be less than significant, and helps the Project applicant in avoiding the take of individual burrowing owls and their nests as prohibited by law. Accordingly, CDFW recommends that the City include in a revised MND the following revisions to Mitigation Measure BIO-1, with removals in ~~strikethrough~~ and additions in **bold**:

Mitigation Measure BIO-1: Burrowing Owls

~~To mitigate potential impacts to burrowing owl, two pre-construction surveys shall be conducted in accordance with CDFW protocol. The first survey shall occur between 14 and 30 days prior to ground disturbance, and the second shall occur within 24 hours of the initiation of ground disturbance activities for any phase of development on the Project site.~~

- ~~• If no owls are detected during those surveys, ground disturbance may proceed without further consideration of this species, assuming there is no lapse between the surveys and construction, because the protocol states “time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.”~~
- ~~• If burrowing owls are detected during the surveys, avoidance and minimization measures shall be required. Avoidance and minimization measures may include establishing a buffer zone, installing a visual barrier, implementing burrow exclusion and/or closure techniques, in conformance with CDFW protocol.~~

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game 2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe the avoidance and minimization actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.

Nesting Bird Protection

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

The MND indicates that the Project site has the potential to support nesting birds. Although the MND includes Mitigation Measure BIO-2 for nesting birds, the timing and scope are insufficient. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting onsite**. Preconstruction nesting bird surveys shall be performed within 3 days prior to Project activities to determine the presence and location of nesting birds.

CDFW recommends that the City of Palm Desert include in a revised MND the following revisions to Mitigation Measure BIO-2, with additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-2: ~~Migratory Bird Treaty~~ **Avoidance of Nesting Birds**

~~If ground disturbance or tree or plant removal is proposed between February 1st and August 31st, a qualified biologist shall conduct a nesting bird survey within 7 to 10 days of initiation of grading onsite, focusing on MBTA covered species. If active nests are reported, then species specific measures shall be prepared. At a~~

~~minimum, grading in the vicinity of a nest shall be postponed until the young birds have fledged. For construction that occurs between September 1st and January 31st, no pre-removal nesting bird survey is required.~~

~~• In the event active nests are found, exclusionary fencing shall be placed around the nests until such time as nestlings have fledged. Avoidance buffers shall be 100 to 300 feet from the nests of unlisted songbirds, and 500 feet from the nests of birds-of-prey and listed species.~~

Nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

Crotch Bumble Bee (*Bombus crotchii*)

On September 30, 2022, Crotch bumble bee was reinstated to candidate status under the California Endangered Species Act (CESA) by the California Fish and Game Commission. As a candidate species, Crotch bumble bee receives the same legal protection afforded to endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). The MND indicates that Crotch bumble bee is a special-status species that is not federally or state listed as endangered or threatened. Please revise the MND to reflect the current status of Crotch bumble bee as a candidate species under CESA. Species-specific surveys for Crotch bumble bee should be included in the inventory of special-status species as discussed in the "Assessment of Biological Resources" section above.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSIONS

CDFW appreciates the opportunity to comment on the MND to assist the City of Palm Desert in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify the Project's significant, or potentially significant, impacts on biological resources including rare, threatened, endangered, and other special-status species. A complete assessment of biological resources across the entire Project site is needed to both inform appropriate avoidance, minimization, and mitigation actions and substantiate the City's determination that impacts to biological resources are less than significant. Without this additional information on the existing conditions of the biological resources at the Project site, the MND contains insufficient information to facilitate a meaningful review by the CDFW. Further, CDFW is concerned that without additional information on existing biological conditions of the Project site, the City of Palm Desert may lack substantial evidence to support a determination that the Project's impacts are mitigated to a level that is less than significant. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Environmental Scientist, at jacob.skaggs@wildlife.ca.gov.

Nick Melloni, Senior Planner
City of Palm Desert
October 24, 2022
Page 13

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW
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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
<p>If the City of Palm Desert forgoes the recommended complete inventory of biological resources and analysis of potentially significant impacts in a revised MND, CDFW recommends that the following mitigation measure be added to a revised MND:</p> <p>Mitigation Measure [X]: Assessment of Biological Resources</p> <p>Prior to construction or issuance of a grading permit, the Project applicant will submit to the City and CDFW the results of an assessment of biological resources as described below:</p> <p>A complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory shall address seasonal variations in use of the Project area and shall not be limited to resident species. Focused species-specific surveys, completed by a CVMSHCP Acceptable Biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary.</p> <p>If any rare, threatened, endangered, and other sensitive species are observed within the Project footprint, the Project applicant will prepare a report for review and approval by the City of Palm Desert and CDFW detailing both actions to avoid and minimize impacts to the species and a mitigation strategy for all</p>	<p>Timing: Prior to construction or issuance of a grading permit</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project applicant</p> <p>Monitoring and Reporting: City of Palm Desert</p>

<p>unavoidable impacts to these species that reduces Project impacts to a level that is less than significant.</p>		
<p>CDFW recommends that the City of Palm Desert include in a revised MND Mitigation Measure BIO-[Y]: Special-Status Plant Species:</p> <p>Mitigation Measure BIO-[Y]: Special-Status Plant Species</p> <p>A thorough floristic-based assessment of special status plants and natural communities, following CDFW's <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities</i> (CDFW 2018 or most recent version) shall be performed by a qualified biologist at the appropriate time(s) of year and prior to commencing Project activities. Should any special status plants or natural communities be present in the Project area, a qualified restoration specialist shall assess whether perennial species may be successfully transplanted to an appropriate natural site. If successful transplantation of perennial species is determined by a qualified restoration specialist, a receiver site shall be identified, and transplantation shall occur at the appropriate time of year. Additionally, the qualified restoration specialist shall perform seed collection and dispersal from special status annual plant species to a natural site as a conservation strategy to minimize Project impacts. If these measures are implemented, monitoring of plant populations shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation shall be no net reduction in the size or viability of the local population.</p>	<p>Timing: Prior to commencing Project activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project applicant</p> <p>Monitoring and Reporting: City of Palm Desert</p>

<p>CDFW recommends that that following mitigation measures is added to a revised MND.</p> <p>Mitigation Measure BIO-[Z]: CVMSHCP Compliance</p> <p>Prior to construction and issuance of any grading permit, the City of Palm Desert shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee.</p>	<p>Timing: Prior to construction and issuance of a grading permit</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project applicant</p> <p>Monitoring and Reporting: City of Palm Desert</p>
<p>CDFW recommends that the City include in a revised MND the following revisions to Mitigation Measure BIO-1, with removals in strike through and additions in bold:</p> <p>Mitigation Measure BIO-1: Burrowing Owls</p> <p>To mitigate potential impacts to burrowing owl, two pre-construction surveys shall be conducted in accordance with CDFW protocol. The first survey shall occur between 14 and 30 days prior to ground disturbance, and the second shall occur within 24 hours of the initiation of ground disturbance activities for any phase of development on the Project site.</p> <p>• If no owls are detected during those surveys, ground disturbance may proceed without further consideration of this species, assuming there is no lapse between the surveys and construction, because the protocol states “time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.”</p> <p>• If burrowing owls are detected during the surveys, avoidance and minimization measures shall be required. Avoidance and minimization measures may include establishing a buffer zone, installing a visual barrier, implementing burrow exclusion and/or closure techniques, in conformance with CDFW protocol.</p> <p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation (California</i></p>	<p>Timing: Prior to commencing project activities, and no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project applicant</p> <p>Monitoring and Reporting: City of Palm Desert</p>

<p>Department of Fish and Game 2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe the avoidance and minimization actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall</p>		
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<p>be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.</p>		
<p>CDFW recommends that the City of Palm Desert include in a revised MND the following revisions to Mitigation Measure BIO-2, with additions in bold and removals in strikethrough:</p> <p>Mitigation Measure BIO-2: Migratory Bird Treaty Avoidance of Nesting Birds</p> <p>If ground disturbance or tree or plant removal is proposed between February 1st and August 31st, a qualified biologist shall conduct a nesting bird survey within 7 to 10 days of initiation of grading onsite, focusing on MBTA covered species. If active nests are reported, then species specific measures shall be prepared. At a minimum, grading in the vicinity of a nest shall be postponed until the young birds have fledged. For construction that occurs between September 1st and January 31st, no pre-removal nesting bird survey is required.</p> <p>In the event active nests are found, exclusionary fencing shall be placed around the nests until such time as nestlings have fledged. Avoidance buffers shall be 100 to 300 feet from the nests of unlisted songbirds, and 500 feet from the nests of birds of prey and listed species.</p> <p>Nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet</p>	<p>Timing: No more than 3 days prior to vegetation removal or ground-disturbing activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project applicant</p> <p>Monitoring and Reporting: City of Palm Desert</p>

<p>for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
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