State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

November 17, 2022
Sent via e-mail

Manuel Rocha
Assistant Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201

AVENUE 44 APARTMENTS (PROJECT)
DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION (IS/MND)
SCH# 2022100533

Dear Mr. Rocha:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an IS/MND from the City of Indio for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. CDFW also appreciates the extension granted by the City of Indio to CDFW to submit comments by November 17, 2022. 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.

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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Indio

Objective: The objective of the Project is to develop 180 units of multi-family housing on 5.7 acres of undeveloped parcels. The housing development will include construction of 8 three-story apartment buildings (with a maximum height of 35 feet); common spaces such as clubhouse, dog park, pool area, and fitness center; access roads/internal streets along the north, west, east, and center of the site; 238 parking stalls; hardscape; landscaping;

[1] CEQA 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.

and associated utilities, including infiltration basins and trenches to collect and store stormwater. Construction is expected to occur in five phases, including site preparation, grading, building construction, paving, and architectural coating.

Location: The Project is located in the City of Indio on two parcels (Assessor's Parcel Numbers 692-060-019 and 692-060-020), north of Avenue 44 and east of Golf Center Parkway, Riverside County, California. Lands surrounding the parcels to the north and west are developed residential units, whereas lands to the east and across Avenue 44 to the south are vacant lands. The Project's parcels are located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSCP) boundary. The Project is within the Indio subbasin of the Coachella Valley Groundwater Basin.

Timeframe: Construction is anticipated to occur over a 1-year period from 2023 to 2024.

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). CDFW offers the comments and recommendations below to assist the City of Indio in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The IS/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 following comments and recommendations to assist the City in adequately identifying and mitigating the Project's significant, or potentially significant, impacts to biological resources.

CDFW's comments and recommendations on the IS/MND are explained in greater detail below and summarized here. The IS/MND bases its analysis of impacts to biological resources on a report by Wood Environment & Infrastructure Solutions, Inc., which conducted a field assessment of the Project site on July 15, 2022 (Appendix B of the IS/MND). CDFW is concerned about the potential for special-status species, including those not covered under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), to occur on the Project site. The habitat assessment was not conducted at the appropriate time(s) of year to detect all special-status species on site. Surveys should be conducted using a standard survey protocol to inform appropriate avoidance, minimization, and mitigation measures, as well as to determine whether impacts to biological resources have been mitigated to a level that is less than significant. Furthermore, the mitigation measures provided in the IS/MND are not adequate to protect nesting birds and burrowing owls.

Assessment of Impacts to Biological Resources

Nesting Birds

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.).

CDFW is concerned about impacts to nesting birds from ground-disturbing activities and construction. Although the IS/MND includes Mitigation Measure (MM) BIO-1 for nesting birds, the timing and scope are insufficient to protect nesting birds. CDFW recommends

the revised IS/MND include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. 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 MM BIO-1 be revised as follows:

MM BIO-1: Avoidance of Nesting Birds

> **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.**

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for proposed MM BIO-1–10 (see Attachment 1).

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 IS/MND (Appendix B, p. 14) acknowledges that foraging habitat for burrowing owls is present on-site and that “dispersing birds could utilize the site in the future.” Whitewater River, which provides wildlife habitat and a corridor for wildlife movement, is near the Project site. Unprocessed Biogeographic Information and Observation System (BIOS) data documents 10-16 owls and multiple burrows directly across Route 10 in the Whitewater River (~0.25 miles away) in October 2021. Due to the potential for burrowing owl to move into disturbed sites, CDFW recommends that prior to commencing Project activities, pre-construction surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). Although the IS/MND includes Mitigation Measure (MM) BIO-2 for burrowing owls, the timing and scope are insufficient to protect burrowing owls. CDFW recommends the revised IS/MND include specific avoidance and minimization measures to ensure that impacts to burrowing owls do not occur. CDFW recommends MM BIO-2 be revised as follows:

MM BIO-2: Burrowing Owl Surveys

> **Pre-construction 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* (CDFG 2012 or most recent version). Pre-construction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the pre-construction 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.**

Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)

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 Project occurs within the CVMSHCP area and is subject to provisions and policies of the CVMSHCP. The Project does not occur within or share a common boundary with a Conservation Area of the CVMSHCP; however, East Indio Hills Conservation Area is approximately 1.16 miles northeast of the Project, and Indio Hills Palms Conservation Area is approximately 4.6 miles northwest of the Project. To be considered a covered activity, Permittees should demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. The City of Indio is the Lead Agency and a Permittee of the CVMSHCP. CDFW recommends adding the following mitigation measure:

MM BIO-3: CVMSHCP Compliance

> **Prior to construction and issuance of any grading permit, the City of Indio 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.**

Special-Status Plants

Based on review of the California Natural Diversity Database (CNDDB) and BIOS, plant species that are state and/or federally listed as endangered and plant species with California Rare Plant Ranks of 1B and 2B have the potential to occur in the Project area. 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.

The IS/MND indicates that no special-status plants were observed during the habitat assessment conducted on July 15, 2022. The biological report (p. 7; Appendix B, p. 19) indicates that 31 special-status plant species were identified in literature and database

searches within a 4- to 5-mile radius of the Project site, including species not covered by the CVMSHCP. CDFW is concerned that the habitat assessment was not conducted at the appropriate time(s) of year to detect all special-status plants on the Project site. CNDDB/BIOS indicates that the following special-status plants have historically occurred near the Project location: Glandular ditaxis (*Ditaxis claryana*), Lancaster milk-vetch (*Astragalus preussii* var. *laxiflorus*), Gravel milk-vetch (*Astragalus sabulonum*), and chaparral sand-verbena (*Abronia villosa* var. *aurita*). 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 Indio 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 are located within the Project site, CDFW recommends that the IS/MND be revised to include appropriate avoidance minimization, and mitigation measures. CDFW recommends adding the following mitigation measure:

MM BIO-4: Special-Status Plants

> **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 prior to commencing Project activities. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain an Incidental Take Permit for those species not covered under the CVMSHCP prior to the start of Project activities.**

Desert Tortoise (*Gopherus agassizii*)

According to the IS/MND, no desert tortoises were detected during the habitat assessment conducted on July 15, 2022. Chapter 4 of the *Desert Tortoise (Mojave Population) Field Manual* indicates that "surveys should be conducted during the desert tortoise's most active periods (April through May or September through October)" (USFWS 2009, p. 4–8). CDFW is concerned that the timing and scope of the survey were insufficient to determine the presence of desert tortoise on the Project site.

Although desert tortoise is covered under the CVMSHCP, Section 9.6.1.4 of the plan indicates: "Both inside and outside Conservation Areas, avoidance, minimization, and mitigation measures require relocation of individual tortoises if required surveys locate individuals on the site of Covered Activities. For more information about avoidance, minimization, and mitigation measures see Section 4.4." CDFW recommends that prior to commencing Project activities, preconstruction surveys for desert tortoise following the *Desert Tortoise (Mojave Population) Field Manual* should be conducted by a qualified biologist. As a result, CDFW recommends adding the following mitigation measure:

MM BIO-5: Desert Tortoise Surveys

> **No more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS *Desert Tortoise (Mojave Population) Field Manual* (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.**

Desert Kit Fox (*Vulpes macrotis arsipus)* and American Badger (*Taxidea taxus*)

Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, § 460) and may not be taken at any time. BIOS data layers showing connectivity modeling for the California Desert Linkage Network indicate that the Project site falls within core breeding habitat for kit fox. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found onsite during breeding season, it could delay Project activities for the length of the breeding season.

American badgers are listed as a Species of Special Concern (SSC) by CDFW. BIOS data layers showing predicted habitat indicate that the Project site falls within core foraging habitat for American badgers and that occurrences have been reported in the Project area. American badgers are nocturnal, and it is crucial to adequately assess whether they are present on the Project site well in advance of commencing Project activities. If American badgers are found onsite during breeding season, it could delay Project activities for the length of the breeding season.

The IS/MND (Appendix B, p. 7) acknowledges that the "brief, one visit assessments are limited by the seasonal timing and short duration of the survey period as well as the nocturnal, fossorial and/or migratory habits of many animals." CDFW is concerned that the timing and scope of the habitat assessment were not sufficient to assess whether desert kit fox or American badger are present on the Project site. Therefore, CDFW recommends that prior to commencing Project activities, pre-construction surveys for desert kit fox and American badger be conducted by a qualified biologist. As a result, CDFW recommends the following mitigation measures be included in the IS/MND:

MM BIO-6: Desert Kit Fox Surveys

> **No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.**

MM BIO-7: American Badger Surveys

> **No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a qualified biologist shall conduct a survey to determine if potential American badger burrows are present in the Project area. If potential burrows are located, they shall be monitored using the best judgement of the qualified biologist. If the burrow is determined to be active, the qualified biologist shall flag and create a 50-foot buffer around the den. If impacts to the den are unavoidable, the qualified biologist will verify there are suitable burrows in avoided habitat within the Project area or outside of the Project area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5 day period. After the qualified biologist has determined there are no active burrows, the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile American badgers may be present and dependent on**

parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

Minimizing Impacts to Other Species

The IS/MND (Appendix B, p. 7) acknowledges that "the number of species detected does not represent the total number of species that may occur on the Project site. Brief, one visit assessments are limited by the seasonal timing and short duration of the survey period as well as the nocturnal, fossorial and/or migratory habits of many animals," but includes no avoidance and minimization measures. Because of the potential for previously undetected wildlife to occur on the Project site, CDFW recommends inclusion of the following mitigation measure to allow non-listed, non-special-status terrestrial wildlife to leave or be moved out of harm's way:

MM BIO-8: Minimizing Impacts to Other Species

To avoid impacts to terrestrial wildlife, a qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Individuals of any wildlife species found shall not be harassed and shall be allowed to leave the project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-special-status wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs, and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat nearby the site of capture. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with appropriate authorization by CDFW shall move CESA-listed or other special-status species.

Noise

Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cures (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

The IS/MND (p. 61) acknowledges that sources of construction noise from the Project will include "a combination of trucks, power tools, concrete mixers, and portable generators, which can reach high noise levels when combined" but includes no analysis of the impacts of construction noise on biological resources. The IS/MND indicates a threshold of 80 dB during the hours when construction is permitted (p. 61), which exceeds exposure levels that may adversely affect wildlife species. Because of the potential for construction noise to negatively impact wildlife, CDFW recommends that the IS/MND be revised to include the following mitigation measure:

MM BIO-9: Noise

> **Restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning). Do not use generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. Consider use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.**

Artificial Light

Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; and the detection of resources and natural enemies and navigation (Gatson et al. 2013). Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

The IS/MND indicates (p. 19) that the development on the Project site will "generate increased levels of light from … exterior building lighting, safety and security lighting, landscape lighting, and vehicles"; however, impacts to biological resources are not analyzed and no mitigation measures are proposed. An analysis of the direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures should be included in the IS/MND. Because of the potential for artificial nighttime lighting used during construction and during operation of the housing development to impact biological resources, CDFW recommends that the IS/MND be revised to include the following mitigation measure:

MM BIO-10: Artificial Light

> **During Project construction and operation, the City shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.**

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the City of Indio in identifying and mitigating Project impacts on biological resources. CDFW concludes that the IS/MND does not adequately identify or mitigate for the Project's significant, or potentially significant, impacts on biological resources. CDFW recommends that prior to adoption of the IS/MND, the City of Indio revise the document to include a more complete assessment of the Project's potential impacts on biological resources, as well as appropriate avoidance, minimization, and mitigation measures. 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 Alyssa Hockaday, Senior Environmental Scientist (Specialist), at (760) 920-8252 or alyssa.hockaday@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...

Kim Freeburn
Environmental Program Manager
Inland Deserts Region

cc: Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW
Heather.Brashear@Wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Attachment 1: MMRP for CDW-Proposed Mitigation Measures

References:

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Biological Resources (BIO)		
Mitigation Measure (MM) Description	**Implementation Schedule**	**Responsible Party**
MM-BIO-1: Avoidance of Nesting Birds 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.	No more than three (3) days prior to vegetation clearing or ground disturbance activities.	City of Indio
MM-BIO-2: Burrowing Owl Surveys Pre-construction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24	**Pre-construction surveys:** No less than 14	City of Indio

hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or most recent version). Pre-construction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation. If the pre-construction 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.	days prior to start of Project-related activities and within 24 hours prior to ground disturbance.	
MM-BIO-3: CVMSHCP Compliance Prior to construction and issuance of any grading permit, the City of Indio 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.	Prior to construction and issuance of any grading permit.	City of Indio
MM-BIO-4: Special-Status Plants 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 prior to commencing Project activities. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain an Incidental Take Permit for those species not covered under the CVMSHCP prior to the start of Project activities.	Prior to commencing Project activities.	City of Indio
MM-BIO-5: Desert Tortoise Surveys No more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS Desert Tortoise (Mojave Population) Field Manual (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.	**Pre-construction surveys:** No more than 14 days prior to start of Project-related activities.	City of Indio

MM-BIO-6: Desert Kit Fox Surveys No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.	**Pre-construction surveys:** No more than 14 days prior to start of Project-related activities.	City of Indio
MM BIO-7: American Badger Surveys No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a qualified biologist shall conduct a survey to determine if potential American badger burrows are present in the Project area. If potential burrows are located, they shall be monitored using the best judgement of the qualified biologist. If the burrow is determined to be active, the qualified biologist shall flag and create a 50-foot buffer around the den. If impacts to the den are unavoidable, the qualified biologist will verify there are suitable burrows in avoided habitat within the Project area or outside of the Project area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5 day period. After the qualified biologist has determined there are no active burrows, the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.	**Pre-construction surveys:** No more than 30 days prior to start of Project-related activities.	City of Indio
MM-BIO-8: Minimizing Impacts to Other Species To avoid impacts to terrestrial wildlife, a qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing	Prior to and during Project activities.	City of Indio

activities to inspect the Project area prior to any Project activities. Individuals of any wildlife species found shall not be harassed and shall be allowed to leave the project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-special-status wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs, and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat nearby the site of capture. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with appropriate authorization by CDFW shall move CESA-listed or other special-status species.		
MM-BIO-9: Noise Restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning). Do not use generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. Consider use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.	During Project activities.	City of Indio
MM-BIO-10: Artificial Light During Project construction and operation, the City shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.	During Project construction and operation.	City of Indio