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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

JAN 26 2023

STATE CLEARING HOUSE

January 26, 2023
Sent via email

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

Calhoun and Avenue 43 Specific Plan (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2023010106

Dear Mr. Rocha:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Indio 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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

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.

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: CRERMG Calhoun 29, LLC

Objective: The Project proposes to establish building and development standards and design guidelines within the Project boundaries. The Project proposes the construction of medium-density residential developments divided into Planning Area 1 (PA-1) and Planning Area 2 (PA-2). Each Planning Area will develop as an independent, self-contained neighborhood. PA-1 is approximately 29.1 acres and encompasses the eastern half of the Project area. Development of PA-1 includes half street improvements along the Calhoun Street and Avenue 43 frontages, including landscaping, and proposes 340 residential units consisting of 195 garden style multi-family units and 145 townhomes and detached single-family units. Development of PA-1 would occur immediately following Specific Plan approval. PA-2 is approximately 30.22 acres and encompasses the western portion of the Project site. Allowable land uses are limited to residential uses. PA-2 proposes up to 860 residential units. The final site plan and housing type will largely depend on future developers but will most likely consist of low-rise (3-stories or less) multi-family units. The site plan and unit mix for PA- 2 has not been developed. This Planning Area will be a second phase of development and will require a subsequent Design Review application.

Location: The Project site is located on the east side of I-10, west of Golf Center Parkway, and south of Avenue 43 in the City of Indio, Riverside County, California. The site is approximately 60 acres and consists of Assessor's Parcel Number (APN) 692-060-023, 692-060-006, -007, and -008. Project is in the south half of Section 13, Township 5 South Range 7 East, San Bernardino Baseline and Meridian.

Timeframe: The Project proposes that development of PA-1 will occur immediately following Specific Plan approval. The timeframe for the development of PA-2 is unknown and will require a subsequent Design Review application.

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 MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the mitigation measures in the MND are not sufficient in timing and scope to reduce impacts to less than significant, particularly for burrowing owls and nesting birds.

1) *Burrowing owls*

Burrowing owl (*Athene cunicularia*) 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.). Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

Pages 15 and 16 of the Project's Biological Resources Assessment dated June 2022 indicate that suitable burrowing owl habitat, including suitable burrows, was identified at various locations along the southern portion of the Project site. One burrowing owl was also observed in the southern portion of the Project site. The Biological Resources Assessment indicates that this information was collected over a single field assessment conducted on April 22, 2022. In addition to conducting a habitat assessment for burrowing owl, CDFW recommends that focused burrowing owl surveys and an impact assessment are also completed per the guidelines provided in the Staff Report on Burrowing Owl Mitigation (CDFG 2012²) and that the results are included in a revised MND. Burrowing owl surveys provide information needed to determine the potential effects of a proposed project 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

² California Department of Fish and Game (CDFG). 2012. Staff report of burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html

CEQA project activity. Burrowing owl surveys and an impact assessment will also inform appropriate avoidance and minimization measures for the Project and help demonstrate that impacts to burrowing owls are less than significant.

The MND includes Mitigation Measure BIO-1 for burrowing owl; however the timing and scope of the measure is insufficient to ensure that impacts to burrowing owls are reduced to a level less than significant. CDFW recommends that Mitigation Measure BIO-1 is revised in the MND as follows (with additions in **bold** and removals in ~~strikethrough~~):

Mitigation Measure BIO-1: Burrowing Owls

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* (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, and minimization 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 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. ~~A pre-construction survey following CDFW 2012 guidelines²³ must be conducted. Unless avoidable, all burrowing owls must be relocated prior to any ground disturbing activities. If burrowing owls remain on-site, a Burrowing Owl Relocation and Management Plan must be prepared to outline how the owls will be relocated per CDFW guidelines. Any owls occurring on-site must be relocated prior to construction, vegetation removal, or grading activities. Relocation will, at a minimum, require prior approval from the CDFW.~~

2) 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.).

The MND indicates that the Project site has the potential to support nesting birds. Although the MND includes Biological Measure 2 (BIO-2) for nesting birds, the timing and scope are insufficient to ensure that impacts are reduced to a level less than significant. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting on-site.**

To support the Project applicant in avoiding the take of nests, eggs, and nesting birds any time they are located on-site, CDFW recommends the following changes to Mitigation Measure BIO-2 for Nesting Birds (with additions in **bold** and removals in ~~strikethrough~~):

Mitigation Measures BIO-2: 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. ~~For any grubbing, grading or other site disturbance or tree or vegetation removal occurring during the nesting season between February 1st and August 31st, a qualified biologist shall conduct at least one nesting bird survey, and more if deemed necessary by the consulting biologist, immediately prior to initiation of project-related ground disturbing activities. If nesting birds are present, no work shall be permitted near the nest(s) until the young birds have fledged. While there is no established protocol for nest avoidance, when consulted, the CDFW generally recommends avoidance buffers of about 500 feet for birds-of-prey, and 100—300 feet for songbirds. If ground disturbance occurs outside the nesting season, this requirement shall be waived.~~

3) CVMSHCP Implementation

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, the Permittees need to demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. Among other obligations under the CVMSHCP, the City of Indio is required to collect Local Development Mitigation Fees and transmit them to the Coachella Valley Conservation Commission.

CDFW recommends that the City of Indio add the following mitigation measures to a revised MND:

Mitigation Measure BIO-[A]: 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.

4) Landscaping and retention basins

The MND (p. 53) indicates that “up to 30 percent of the total site area, or 18 acres, may be landscaped with a mix of drought tolerant landscaping and minimal turf for open space, retention basins, and paseos.” To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California’s Save our Water website: <https://saveourwater.com/>. In addition, Section 4.0 of the CVMSHCP includes “Table 4-112: Coachella Valley Native Plants Recommended for Landscaping” (pp. 4-180 to 4-182; https://cvmshcp.org/Plan_Documents.htm).

CDFW is also concerned that there could be potential impacts to biological resources resulting from the retention basins. Because retention basins have the potential to create habitat that attracts wildlife, CDFW is concerned that the basins be managed properly. The retention basins will have to be maintained, which poses concerns about work period/season, nesting birds, vegetation removal, and sensitive-species surveys. The revised MND should include an analysis of these issues and provide design specifications of the retention basins.

5) Construction 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 decibels (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 cues (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 MND (p. 60) acknowledges that “noise generating construction activities would include site preparation, excavation, grading, and the construction and finishing of the proposed homes” and that noise levels are “expected to be up to 67.9 dBA Leq.” The MND includes in its analysis of impacts to biological resources (p. 30) that “loud noise created by heavy equipment can cause burrowing owls both on-site or nearby to abandon nests and burrows.” Because of the potential for construction noise to negatively impact wildlife, CDFW recommends that a revised MND include the following mitigation measure:

Mitigation Measure BIO-[B]: 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 should be below the 55-60 dB range within 50-feet from the source.

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

Manuel Rocha, Assistant Planner
City of Indio
January 26, 2023
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CDFW appreciates the opportunity to comment on the MND to assist the City of Indio in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources, including burrowing owl and nesting birds. CDFW recommends that prior to adoption of the 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 and 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 Jacob Skaggs, Environmental Scientist, at jacob.skaggs@wildlife.ca.gov.

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
Heather.Brashear@Wildlife.ca.gov

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- Francis, C. D., C. P. Ortega, and A. Cruz. 2009. Noise pollution changes avian communities and species interactions. *Current Biology* 19:1415–1419.

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

| Mitigation Measures | Timing and Methods | Responsible Parties |
|---|---|---|
| <p>Mitigation Measure BIO-1: Burrowing Owls</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 (2012 or most recent version)</i>. 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, and minimization 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 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</p> | <p>Timing: Prior to adoption of the CEQA document for focused surveys and impact assessment; no less than 14 days prior to the start of Project-activities for preconstruction surveys</p> <p>Methods: See Mitigation Measure</p> | <p>Implementation: Project applicant</p> <p>Monitoring and Reporting: City of Indio</p> |

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| <p>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 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>Mitigation Measures BIO-2: Nesting Birds</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 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</p> | <p>Timing: No more than three 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 Indio</p> |

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| <p>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> | | |
| <p>Mitigation Measure BIO-[A]: CVMSHCP Compliance</p> <p>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.</p> | <p>Timing: Prior to construction and issuance of any grading permit</p> <p>Methods: See Mitigation Measure</p> | <p>Implementation: City of Indio</p> <p>Monitoring and Reporting: City of Indio</p> |
| <p>Mitigation Measure BIO-[B]: Noise</p> <p>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 should be below the 55-60 dB range within 50-feet from the source.</p> | <p>Timing: During Project activities</p> | <p>Implementation: Project applicant</p> <p>Monitoring and Reporting: City of Indio</p> |