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May 15, 2023

Mr. Michael Thornton
 City Engineer
 908 Park Avenue
 Calimesa, CA 92320
 mthornton@cityofcalimesa.net

Subject: Draft Mitigated Negative Declaration, Calimesa Creek Stage III Project, State Clearinghouse No. 2023040377, City of Calimesa, Riverside County

Dear Mr. Thornton:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Calimesa (City) for the Calimesa Creek Stage III Project (Project) for the City of Calimesa (Project Applicant/Proponent) 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state 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

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.

need to exercise regulatory authority as provided by the Fish and Game Code, including 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.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

CDFW issued Natural Community Conservation Plan approval and take authorization in 2004 for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), as per Section 2800, *et seq.*, of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. CDFW is providing the following comments as they relate to the Project’s consistency with the MSHCP and CEQA.

PROJECT DESCRIPTION AND SUMMARY

Description: The City of Calimesa (City; Lead Agency and Project Applicant) is proposing the Calimesa Creek Phase III Project (Project). The proposed Project will consist of the construction of a 53-acre-foot detention basin on a 4.5-acre parcel of vacant land that is adjacent to and north of Calimesa Creek and approximately 150 feet west of 3rd Street. The detention basin would capture upstream high storm water flows in Calimesa Creek. Approximately 35,000 cubic yards of material would be excavated from the detention basin. All export material would be hauled to the San Timoteo Landfill that is located approximately 11 miles southwest of the project in the City of Redlands.

Approximately 100 feet west of 5th Street, the project would join the existing trapezoidal storm channel and transition from a trapezoidal channel to a proposed 7’ x 7’ reinforced concrete box (RCB). The 7’ x 7’ RCB would continue northwest towards County Line Road where a low-flow diversion structure would be constructed and divert a portion of the runoff west to the existing Calimesa Creek earthen channel. The remaining flow would continue northerly to County Line Road where a new underground 72” reinforced concrete pipe (RCP) would be constructed in County Line Road. The underground 72” RCP would convey flows westerly in County Line Road to Calimesa Boulevard where the underground 72” RCP would pick up additional flows from an existing underground 54” storm drain in Calimesa Boulevard. At this confluence, an existing underground 78” RCP would continue westerly carrying flows underground in County Line Road and curve southwesterly to connect to the existing 78” RCP beneath an existing parking lot west of Calimesa Boulevard and south of County Line Road.

Location: The Project site is located between County Line Road on the north, 3rd Street on the east, Rogers Lane/Court on the south, and 4th Street on the west. The

proposed storm drain system will be located along County Line Road between 5th Street on the east and Interstate 10 on the west in the City of Calimesa, Riverside County, California, in Township 2 South, Sections 11 and 13, Range 2 West, of the U.S. Geological Survey 7.5", California topographic quadrangle map; Assessor's Parcel Numbers 410-030-049 through -052.

COMMENTS AND RECOMMENDATIONS

Based on the documents for review, CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions are also included to improve the environmental document. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

ADEQUACY OF ASSESSMENT OF IMPACTS TO BIOLOGICAL RESOURCES

Surveys for biological resources have yet to be conducted. The MND identifies that general biological assessment of the Project was completed in 2019. However, sensitive/rare plant surveys have not been completed and targeted protocol-level bird surveys for species that may occur (such as least Bell's vireo, southwestern willow flycatcher, western yellow-billed cuckoo, coastal California gnatcatcher, and burrowing owl) have also not been conducted. The Wildlife Agencies are concerned that, for the purposes of CEQA, the surveys may be inadequate to form a complete inventory of the species present in the Project area.

Given the lack of evidence regarding the potential biological resources that may occur within the Project site, the CDFW recommends that new surveys be conducted to provide a current and defensible assessment of Project impacts to biological resources.

Western Riverside County Multiple Species Habitat Conservation Plan

Compliance with approved habitat plans, such as the MSHCP, 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 MSHCP as a result of this Project is necessary to address CEQA requirements. The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP.

To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The City is the Lead Agency and is signatory to the Implementing Agreement of the

MSHCP. To demonstrate consistency with the MSHCP, as part of the CEQA review, the City shall ensure the Project pays Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP; and demonstrates compliance with: 1) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.1.2 of the MSHCP); 2) the Urban/Wildlands Interface Guidelines (Section 6.1.4 of the MSHCP); and 3) the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

Specific Comments

Comment #1: Protection of Riparian/Riverine and Vernal Pool Resources (MSHCP Section 6.1.2)

The procedures described in the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools section of the MSHCP Plan (MSHCP Section 6.1.2) are to ensure that the biological functions and values of these areas are maintained throughout the MSHCP Plan Area (including all areas of the Plan located outside the Criteria Area). Additionally, this process helps identify areas to consider for priority acquisition, as well as those functions that may affect downstream values related to Conservation of Covered Species within the MSHCP Conservation Area. The assessment of riparian/riverine and vernal pool resources may be completed as part of the CEQA review process as set forth in Article V of the State CEQA Guidelines. However, the MSHCP identifies that the U.S. Fish and Wildlife Service and CDFW shall be notified in advance of approval of public or private projects of draft determinations for the biologically equivalent or superior determination findings associated with the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policies presented in Section 6.1.2 of the MSHCP (MSHCP Section 6.11). As required by the MSHCP Plan, its Implementation Agreement, and the City's associated take permits from USFWS and CDFW, completion of the DBESP process prior to adoption of the environmental document helps to ensure that the Project will be consistent with the MSHCP Plan, and provides public disclosure and transparency during the CEQA process by identifying the Project impacts and mitigation for wetland habitats and species, a requirement of CEQA Guidelines, §§ 15071, subds.(a)-(e).

The MSHCP identifies that assessment of these areas include identification and mapping of riparian/riverine areas and vernal pools. The assessment shall consider species composition, topography/ hydrology, and soil analysis, where appropriate. The documentation for the assessment shall include mapping and a description of the functions and values of the mapped areas with respect to the species identified in Section 6.1.2 of the MSHCP. Factors to be considered include hydrologic regime, flood storage and flood-flow modification, nutrient retention and transformation, sediment trapping and transport, toxicant trapping, public use, wildlife Habitat, and aquatic Habitat.

The MSHCP identifies that for mapped riparian/riverine and vernal pool resources that are not included in the MSHCP conservation area, applicable mitigation under CEQA, shall be imposed by the Permittee (in this case the Lead Agency). Further, the MSHCP identifies that to ensure the standards in Section 6.1.2 are met, the Permittee shall ensure that, through the CEQA process, project applicants develop project alternatives demonstrating efforts that first avoid, and then minimize direct and indirect effects to the wetlands mapped pursuant to Section 6.1.2. If an avoidance alternative is not feasible, a practicable alternative that minimizes direct and indirect effects to riparian/riverine areas and vernal pools and associated functions and values to the greatest extent possible shall be selected. Those impacts that are unavoidable shall be mitigated such that the lost functions and values as they relate to Covered Species are replaced as through the Determination of Biologically Equivalent or Superior Preservation (DBESP).

The City is required to ensure the Applicant completes the DBESP process prior to completion of the MND to demonstrate implementation of MSHCP requirements in the CEQA documentation.

CDFW appreciate the analysis of impacts provided within the MND and General Biological Resource Assessment. However, the MSHCP implementation process is not complete because a DBESP has not been prepared, and has not been submitted to CDFW for review and response, to determine if the mitigation proposed for the impacts to riparian/riverine resources is biologically equivalent or superior preservation to avoidance. It is not appropriate for the City to adopt the MND until the DBESP is complete because the City is required to notify CDFW in advance of approval of public and private projects for identified MSHCP activities, such as completion of the DBESP for the riparian/riverine policy. CDFW request that to demonstrate implementation of the MSHCP, the City of Calimesa complete the DBESP process and once the DBESP is complete, revise the Biological Mitigation Measure 6 (MM 6) and update with the mitigation measures identified in the DBESP. However, if the City does not complete the DBESP according to the timeframes specified in the MSHCP (prior to adoption of the CEQA document), CDFW recommends the City include the following measure prior to adopting the MND.

Recommended Potentially Feasible Mitigation Measure(s):

CDFW recommend revising Mitigation Measure 6 in the MND per the edits below (edits are in ~~striketrough~~ and **bold**), and also included in Attachment 1 “Mitigation Monitoring and Reporting Program” .:

Mitigation Measure 6: If the project cannot demonstrate avoidance of MSHCP Section 6.1.2 riparian habitat or riverine resources in perpetuity, a Determination of Biologically Equivalent or Superior Preservation Report shall be required and propose mitigation that demonstrates equivalent or superior function and value. This document shall be reviewed, approved, and coordinated

with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife prior to the start of construction.

Comment #2: Impacts to the Southern California Black Walnut

Issue: The Project may have a significant impact on Southern California black walnut tree (*Juglans californica*).

Specific impact: The Southern California black walnut is a riparian tree species which is endemic to California, is in rapid decline, has specialized habitat requirements, and limited distribution within the plan area.

Why impacts would occur: The MND states that a Southern California black walnut tree (*Juglans californica*) will be eliminated by the Project. The Southern California black walnut is a riparian tree species which is endemic to California, is in a rapid decline, has specialized habitat requirements, and limited distribution within the Plan Area. This species is identified as benefiting from the riparian/riverine policy procedures (Section 6.1.2 of the MSHCP), however, the MND includes no measures to offset the impacts to this riparian species.

To demonstrate biological equivalence to avoidance of black walnut, CDFW recommend that the City and the Applicant work with the Western Riverside County Regional Conservation Authority (RCA) to identify a location on RCA-owned conserved land that has suitable habitat for the black walnut, and that the Applicant plant a number of black walnut saplings there to offset the loss of the mature tree on the Project site. The proposal should identify a restoration plan to ensure establishment of the walnut saplings in the new location. We recommend collecting seeds from the walnuts on site to help conserve genetic variability of the species. CDFW recommends this process be outlined in the DBESP and included as part of an updated mitigation measure prior to the adoption of the MND. However, if the City does not complete the DBESP according to the timeframes specified in the MSHCP (prior to adoption of the CEQA document), CDFW recommends the City include the following measure prior to adopting the MND.

Recommended Potentially Feasible Mitigation Measure(s):

CDFW recommend including the following Mitigation Measure in the MND per the edits below (edits are in ~~strike through~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program" .:

Mitigation Measure XX: A survey for Southern California black walnut shall be conducted prior to Project activities to determine if any black walnut trees would be removed. If Southern California black walnut trees would be removed, mitigation shall be required and shall

demonstrate equivalent or superior function and value, per a CDFW-approved DBESP.

Comment #3: Impacts to Coast Live Oak

Issue: The Project may have a significant impact on coast live oak (*Quercus agrifolia*).

Specific impacts: The coast live oak (*Quercus agrifolia*) is a riparian tree species which is endemic to California, is in rapid decline, has specialized habitat requirements, and limited distribution within the plan area.

Why impacts would occur: The MND states that impacts to coast live oak (*Quercus agrifolia*) woodland may occur within the Project alignment. In the MSHCP, riparian woodlands include coast live oaks which are subject to the riparian/riverine policy procedures (Section 6.1.2 of the MSHCP). However, mitigation to offset the loss of oak trees is not included in the MND.

The coast live oak, a riparian tree species which is native to California, is in a rapid decline, has specialized habitat requirements, and limited distribution within the Plan Area. Coast live oak trees serve several important ecological functions such as protecting soils from erosion and landslides; regulating water flow in watersheds; and maintaining water quality in streams and rivers. Oak trees alone provide nesting and perching habitat for approximately 170 species of birds². Oak woodlands also have higher levels of biodiversity than any other terrestrial ecosystem in California³. This species is crucial to the ecosystem at the Project site, and removal of these trees would result in loss of habitat function. Alongside loss of habitat function, removing the trees may potentially result in permanent loss of habitat quality. Project activities would also contribute to temporal loss of habitat for wildlife species that rely on these native plant communities.

To demonstrate biological equivalence to avoidance of coast live oak, CDFW recommend that the City identify a location that has suitable habitat for the coast live oak where replacement trees can be planted. We recommend planting oak trees at a 10:1 replacement ratio for individual trees and associated area (acreage) to offset the loss of the mature trees on the Project site. The proposal should identify a restoration plan to ensure establishment of the oak saplings in the new location. We recommend collecting seeds from the oaks on site to help conserve genetic variability of the species. CDFW recommends this process be outlined in the DBESP and included as part of an updated mitigation measure prior to the adoption of the MND. However, if the City does not complete the DBESP according to the timeframes specified in the MSHCP

2 Griffin and Muick. 1990. California Native Oaks: Past and Present. *Fremontia* 18(3): 4-12.

3 Block, W.M., Morrison, M.M., Verner, J. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72-76.

(prior to adoption of the CEQA document), CDFW recommends the City include the following measure prior to adopting the MND.

Recommended Potentially Feasible Mitigation Measure(s):

CDFW recommend revising Mitigation Measure 7 in the MND per the edits below (edits are in ~~striketrough~~ and **bold**), and also included in Attachment 1 “Mitigation Monitoring and Reporting Program” .:

Mitigation Measure No. 7 An oak tree survey shall be conducted 30-days prior to the start of any construction to determine if any oak trees would be removed. If oak trees would be removed, their removal would have to be removed in compliance with Calimesa Municipal Code (CMC) Section 18.70.120. **In addition, mitigation shall be required for each oak tree removed and shall demonstrate equivalent or superior function and value per a CDFW-approved DBESP.**

Comment #4: Impacts to Fairy Shrimp

Issue: The Project may have a significant impact on fairy shrimp.

Specific impacts: The MND states that “the survey area included habitat potentially suitable for Riverside fairy shrimp, the proposed project has been designed to avoid that area.” This species is identified as benefiting from the riparian/riverine policy procedures (Section 6.1.2 of the MSHCP), however, the MND does not include adequate measures to offset the impacts to this riparian species.

Ponding areas and ditches holding water 3 cm or deeper more than 24 hours after the end of a rain event should be surveyed for threatened and endangered species of fairy shrimp following the U.S. Fish & Wildlife Service’s (USFWS) 2017 survey protocol for large branchiopods in Southern California. A complete fairy shrimp protocol survey consists of both a wet-season survey that covers an entire rainy season (October 1 – May 31), and a dry-season survey (including the hatching-out of all cysts found which belong to the genus *Branchinecta*). Both of the component seasonal surveys must be completed with the same continuous 3-year period. Wet-season surveys concluding that listed species of fairy shrimp are absent, but which were performed during a drier-than-average winter, may be ruled inconclusive by USFWS, and may have to be repeated during a rainy season featuring average or better rainfall during the normal wet months, at the discretion of USFWS. As mentioned previously, the City should conduct appropriate surveys and identify appropriate mitigation (in a DBESP) prior to preparation of any CEQA document, so those impacts and mitigation measures can be disclosed to the public as part of the CEQA process. If the City will not complete the DBESP and update the mitigation measures prior to adopting the MND, the proposed mitigation measure should be included.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure No. 4: If suitable potential fairy shrimp habitat exists and cannot be avoided, the City of Calimesa shall conduct protocol-level focused surveys (i.e., two seasons) pursuant U.S. Fish and Wildlife Service Survey Guidelines for the Listed Large Branchiopods (May 31, 2015) to determine presence/absence. If focused-protocol level survey results are positive, and the project cannot permanently avoid fairy shrimp habitat, a Determination of Biologically Equivalent or Superior Preservation report shall be required to propose mitigation that demonstrates equivalent or superior function and value. In accordance with MSHCP Table 9-2, Objective 4 for vernal pool fairy shrimp and Objective 3 for Riverside fairy shrimp, if the survey results are positive, at least 90% of the area with long-term conservation value shall be conserved on-site.

Comment #5: Nesting Bird

Issue: The Project may have a significant impact on nesting birds, including Species of Special Concern and fully protected species, that are subject to Fish and Game Code section 3513 and the Migratory Bird Treaty Act of 1918.

Specific impact: Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of vegetation onsite.

Why impacts would occur: Project activities could result in temporary or long-term loss of suitable nesting and foraging habitats. Construction during the breeding season of nesting birds could potentially result in the incidental loss of breeding success or otherwise lead to nest abandonment. Noise from road use, generators, and heavy equipment may disrupt nesting bird mating calls or songs, which could impact reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009), and songbird abundance and density was significantly reduced in areas with high levels of noise (Bayne et al. 2008). Additionally, noise exceeding 70 dB(A) may affect feather and body growth of young birds (Kleist et al. 2018). In addition to construction activities, residential development and increased human presence in the Project site could contribute to nesting bird impacts.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and to avoid take of nests.

The duration of a pair to build a nest and incubate eggs varies considerably, therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction to ensure all nests on site are identified and to avoid take of nests. Without appropriate species-specific avoidance measures, biological construction monitoring may be ineffective for detecting nesting birds. This may result in Take of nesting birds. Project ground-disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

Evidence impacts would be significant: It is the Project proponent's responsibility to avoid Take of all nesting birds. Fish and Game Code section 3503 makes it 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 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the 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.). 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) 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. These regulations apply anytime nests or eggs exist on the Project site.

Recommended Potentially Feasible Mitigation Measure(s):

To address the above issues and help the Project applicant avoid unlawfully taking of nesting birds, CDFW requests the City include the following mitigation measures in the MND per below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program.

Mitigation Measure 3: To maintain compliance with the Migratory Bird Treaty Act and California Fish and Game Code **Sections 3503, 3503.5, and 3513, site preparation activities (such as ground disturbance, construction activities, and/or removal of trees and vegetation) for all implementing development and infrastructure projects shall be avoided, to the greatest extent possible, during the nesting season.** If ground-disturbing and/or vegetation clearance activities are scheduled to occur during the avian nesting season (~~typically February 15 through August 31~~), the City of Calimesa shall require that a pre-construction nesting bird survey be conducted by a qualified biologist within the project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint within 3 days prior to initiation of activity. **The survey**

results shall be provided to the City's Planning Department. The Project Applicant shall adhere to the following:

- 1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**
- 2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.**

If no nesting birds are observed during the survey, site preparation and construction activities may begin. If an active nest or nesting birds (including nesting raptors) is/are detected during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of Calimesa, based on their best professional judgement and experience. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. **The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer.** The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are harassing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require implementation of avoidance measures related to noise, vibration, or light pollution if indirect

impacts are resulting in harassment of the nest. **Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to the City for mitigation monitoring compliance record keeping.**

Comment #6: Impacts to Aquatic and Riparian Resources; Lake and Streambed Alteration Agreement (LSAA)

Issue: Based on review of material submitted with the MND and review of aerial photography, the Project has the potential to impact fish and wildlife resources subject to Fish and Game Code section 1600 et seq.

Specific Impact: Based on review of material submitted with the MND and review of aerial photography, the Project has the potential to impact fish and wildlife resources subject to Fish and Game Code section 1600 et seq. The MND identified a “3.31 acres of riparian/resources within the study area, specifically 2.94 acres of riverine resources and 0.37 acres of riparian habitat.” The Project activities have the potential to impact fish and wildlife resources through the deposition of debris, waste or other materials that could pass into any river, stream, or lake.

Why Impact Would Occur: Project-related activities could potentially alter drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

Evidence Impact Would Be Significant: The Project may substantially adversely affect the existing stream pattern and geomorphologic processes of the Project site through the deposition of debris, waste or other materials that could pass into any river, stream or lake. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that “any river, stream or lake” includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and

whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code, § 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

Recommended potentially feasible mitigation measure(s):

To ensure compliance with Fish and Game Code section 1602 CDFW recommends that the City include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 et seq. resources may occur within the proposed Project alignment.

CDFW recommends the inclusion of the following measure in the MND per the edits below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program":

Mitigation Measure 5: If jurisdictional waters are impacted as a result of project implementation, the City of Calimesa shall obtain all appropriate permits pursuant to Section 404 of the Clean Water Act from the U.S. Army Corps of Engineers, a Water Quality Certification pursuant to Section 401 of the Clean Water Act from the Regional Water Quality Control Board, and a Streambed Alteration Agreement from CDFW pursuant to Sections 1600–1616 of the California Fish and Game Code. **Prior to the grading the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement (SAA) or written documentation from CDFW that a Streamed Alteration Agreement is not needed.**

The notification to CDFW should provide the following information:

- 1. A stream delineation including the bed, bank and channel;**
- 2. Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community**

names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009);

- 3. A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and**
- 4. A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site.**

All mitigation measures and conditions contained within the above permits shall be implemented. At a minimum, the following shall be completed for mitigation for impacts to waters of the state and jurisdictional streambed:

- 1. Compensation for Permanent Impacts: ~~Permanent impacts to waters of the state and jurisdictional streambeds shall be offset by compensation at a minimum of a 1:1 ratio, or as otherwise required by the respective permits.~~ If an SAA is required, the Applicant shall provide compensatory mitigation at no less than 3:1 for impacts to streams and associated natural communities, or at a ratio acceptable to CDFW per a LSA Agreement. Mitigation should occur within the Western Riverside County. On-site mitigation measures may include the enhancement of existing streams. A conceptual Habitat Mitigation and Monitoring Plan shall be prepared, if necessary, for the enhancement activities to address impacts to Fish and Game Code section 1602 resources, which may include non-native species removal and revegetation followed by periodic monitoring. The plan shall specify the criteria and standards by which the enhancement actions will compensate for impacts of the project on streams.**
2. Temporary Impacts: All areas temporarily impacted shall be restored to native grade and contour and revegetated with native species as determined by an adjacent reference site or through documentation of baseline conditions prior to impacts.
3. Best Management Practices. Avoided jurisdictional waters shall be fenced or flagged as environmentally sensitive areas. Best management practices shall be implemented to avoid indirect impacts to jurisdictional waters, including the following:

- a. Vehicles and equipment shall not operate in ponded or flowing water except as described in the permits.
- b. Water containing mud, silt, or other pollutants from grading or other activities shall not be allowed to enter jurisdictional waters or placed in locations that may be subjected to high storm flows.
- c. Spoil sites shall not be located within 30 feet from the boundaries of jurisdictional waters or in locations that may be subject to high storm flows, where spoils might be washed back into drainages.
- d. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to vegetation or wildlife resources resulting from project-related activities shall be prevented from contaminating the soil and/or entering avoided jurisdictional waters.
- e. No equipment maintenance shall occur within 150 feet of jurisdictional waters and no petroleum products or other pollutants from the equipment shall be allowed to enter these areas or enter any off-site state-jurisdictional waters under any flow.

Additional Recommendations

Weed Management Plan. A weed management plan should be developed for the Project site and implemented during the duration of this long-term Project. On-going soil disturbance promotes establishment and growth of non-native weeds. As part of the Project, non-native weeds should be prevented from becoming established. The Projects site should be monitored via mapping for new introductions and expansions of non-native weeds.

Mitigation and Monitoring Reporting Plan

CDFW recommends updating the MND's proposed Biological Resources Mitigation Measures to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [(Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation, monitoring, and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a

summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment 1).

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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND for the Calimesa Creek Stage III Project, State Clearinghouse No. 2023040377 to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. CDFW requests that the City of Calimesa addresses CDFW's comments and concerns prior to adoption of the MND for the Project.

Questions regarding this letter or further coordination should be directed to Katrina Rehrer, Environmental Scientist, at katrina.rehrer@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Mr. Michael Thornton
City of Calimesa
May 15, 2023
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State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project. A final MMRP shall reflect results following additional plant and wildlife surveys and the Project’s final on and/or off-site mitigation plans.

Biological Resources (BIO)			
Mitigation Measure (MM)		Timing	Responsible Party
Protection of Riparian/Riverine and Vernal Pool Resources (MSHCP Section 6.1.2)	Mitigation Measure 6: If the project cannot demonstrate avoidance of MSHCP Section 6.1.2 riparian habitat or riverine resources in perpetuity, a Determination of Biologically Equivalent or Superior Preservation Report shall be required and propose mitigation that demonstrates equivalent or superior function and value. This document shall be reviewed, approved, and coordinated with the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife prior to the start of construction.	Prior to commencing ground- or vegetation disturbing activities	Project Proponent
Black Walnut	MM BIO-XX: A survey for Southern California black walnut shall be conducted prior to Project activities to determine if any black walnut trees would be removed. If Southern California black walnut trees would be removed, mitigation shall be required and shall demonstrate equivalent or superior function and value, per a CDFW-approved DBESP.	Prior to commencing ground- or vegetation disturbing activities	Project Proponent
Oak Tree	Mitigation Measure No. 7 An oak tree survey shall be conducted 30-days prior to the start of any construction to determine if any oak trees would be removed. If oak trees would be removed, their removal would have to be removed in compliance with Calimesa Municipal Code (CMC) Section 18.70.120. In addition, mitigation shall be required for each oak tree removed and shall demonstrate equivalent or superior function and value per a CDFW-approved DBESP.	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

<p>Fairy Shrimp</p>	<p>Mitigation Measure No. 4: If suitable potential fairy shrimp habitat exists and cannot be avoided, the City of Calimesa shall conduct protocol-level focused surveys (i.e., two seasons) pursuant U.S. Fish and Wildlife Service Survey Guidelines for the Listed Large Branchiopods (May 31, 2015) to determine presence/absence. If focused-protocol level survey results are positive, and the project cannot permanently avoid fairy shrimp habitat, a Determination of Biologically Equivalent or Superior Preservation report shall be required to propose mitigation that demonstrates equivalent or superior function and value. In accordance with MSHCP Table 9-2, Objective 4 for vernal pool fairy shrimp and Objective 3 for Riverside fairy shrimp, if the survey results are positive, at least 90% of the area with long-term conservation value shall be conserved on-site.</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>Nesting Birds</p>	<p>Mitigation Measure 3: To maintain compliance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513, site preparation activities (such as ground disturbance, construction activities, and/or removal of trees and vegetation) for all implementing development and infrastructure projects shall be avoided, to the greatest extent possible, during the nesting season. If ground-disturbing and/or vegetation clearance activities are scheduled to occur during the avian nesting season, the City of Calimesa shall require that a pre-construction nesting bird survey be conducted by a qualified biologist within the project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint within 3 days prior to initiation of activity. The survey results shall be provided to the City's Planning Department. The Project Applicant shall adhere to the following:</p> <ol style="list-style-type: none"> 1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting 	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.</p> <p>2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.</p> <p>If no nesting birds are observed during the survey,-site preparation and construction activities may begin. If an active nest or nesting birds (including nesting raptors) are detected during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified biologist and approved by the City of Calimesa, based on their best professional judgement and experience. The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions,</p>		
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	<p>species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are harassing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require implementation of avoidance measures related to noise, vibration, or light pollution if indirect impacts are resulting in harassment of the nest. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to the City for mitigation monitoring compliance record keeping.</p>		
<p>Impacts to Aquatic and Riparian Resources</p>	<p>Mitigation Measure 5: If jurisdictional waters are impacted as a result of project implementation, the City of Calimesa shall obtain all appropriate permits pursuant to Section 404 of the Clean Water Act from the U.S. Army Corps of Engineers, a Water Quality Certification pursuant to Section 401 of the Clean Water Act from the Regional Water Quality Control Board, and a Streambed Alteration Agreement from CDFW pursuant to Sections 1600–1616 of the California Fish and Game Code. Prior to the grading the Project site and prior to the start of Project activities, the Applicant</p>	<p>Prior to commencing ground- or vegetation disturbing activities</p>	<p>Project Proponent</p>

	<p>shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement (SAA) or written documentation from CDFW that a Streamed Alteration Agreement is not needed.</p> <p>The notification to CDFW should provide the following information:</p> <ol style="list-style-type: none">5. A stream delineation including the bed, bank and channel;6. Linear feet and/or acreage of streams and associated natural communities that would be permanently and/or temporarily impacted by the Project. This includes impacts as a result of routine maintenance and fuel modification. Plant community names should be provided based on vegetation association and/or alliance per the Manual of California Vegetation (Sawyer et al 2009);7. A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and8. A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site. <p>All mitigation measures and conditions contained within</p>		
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	<p>the above permits shall be implemented. At a minimum, the following shall be completed for mitigation for impacts to waters of the state and jurisdictional streambeds:</p> <ol style="list-style-type: none"><li data-bbox="653 402 1373 971">4. Compensation for Permanent Impacts: If an SAA is required, the Applicant shall provide compensatory mitigation at no less than 3:1 for impacts to streams and associated natural communities, or at a ratio acceptable to CDFW per a LSA Agreement. Mitigation should occur within the Western Riverside County. On-site mitigation measures may include the enhancement of existing streams. A conceptual Habitat Mitigation and Monitoring Plan shall be prepared, if necessary, for the enhancement activities to address impacts to Fish and Game Code section 1602 resources, which may include non-native species removal and revegetation followed by periodic monitoring. The plan shall specify the criteria and standards by which the enhancement actions will compensate for impacts of the project on streams.<li data-bbox="653 1040 1373 1235">5. Temporary Impacts: All areas temporarily impacted shall be restored to native grade and contour and revegetated with native species as determined by an adjacent reference site or through documentation of baseline conditions prior to impacts.<li data-bbox="653 1273 1373 1403">6. Best Management Practices. Avoided jurisdictional waters shall be fenced or flagged as environmentally sensitive areas. Best management practices shall be implemented to avoid indirect		
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	<p>impacts to jurisdictional waters, including the following:</p> <ul style="list-style-type: none">a. Vehicles and equipment shall not operate in ponded or flowing water except as described in the permits.b. Water containing mud, silt, or other pollutants from grading or other activities shall not be allowed to enter jurisdictional waters or placed in locations that may be subjected to high storm flows.c. Spoil sites shall not be located within 30 feet from the boundaries of jurisdictional waters or in locations that may be subject to high storm flows, where spoils might be washed back into drainages.d. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances that could be hazardous to vegetation or wildlife resources resulting from project-related activities shall be prevented from contaminating the soil and/or entering avoided jurisdictional waters.e. No equipment maintenance shall occur within 150 feet of jurisdictional waters and no petroleum products or other pollutants from the equipment shall be allowed to enter these areas or enter any off-site state-jurisdictional waters under any flow.		
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