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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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June 5, 2023
Sent via e-mail

Nick Melloni
Principal Planner
City of Palm Desert
73510 Fred Waring Drive
Palm Desert, CA 92260

UNIVERSITY MEDICAL OFFICE PARK (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH#: 2023050370

Dear Mr. Melloni:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Palm Desert for the Project pursuant 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. 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: Prest Vuksic Greenwood Architects

Objective: The objective of the Project is to develop a medical office center on 10.5 acres of vacant land. The Project site is within the boundary of the University Neighborhood Specific Plan (General Plan EIR, SCH# 2015081020) and is designated Neighborhood Center in the Plan. A text amendment is proposed to the Specific Plan to allow medical uses. The Project also proposes a Tentative Parcel Map that would subdivide the site into two parcels. Parcel 1 would be approximately 4.83 acres and would include building 1, building 2, and adjacent parking. Parcel 2 would be approximately 5.64 acres and would

[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.

include the remaining parking lot and on-site retention basin. Joint use easements are proposed to allow access to parking across both parcels.

The proposed medical center would consist of two buildings totaling 114,700 square feet and 581 on-site parking spaces. Building 1 would be three-stories, 94,700 square feet, and include medical offices, an urgent care, and potentially labs and radiology services. Building 2 would be a two-story, 20,000 square foot outpatient surgery facility. No emergency services or overnight care are proposed. The Project proposes three access points. The primary access point (main driveway) would be from Gerald Ford Drive along the northwest boundary. The two secondary access points would be Technology Drive to the southeast and College Drive to the southwest.

The Project would be constructed in two phases. Phase 1 would include grading and construction of building 1, approximately 75% of all on-site parking, and most site improvements including access points, internal drives, sidewalk improvements, and landscaping. Phase 2 would include construction of building 2 and the remaining parking at the southeast corner of the site adjacent to building 2. The grading phase would require a net export of 2,620 cubic yards of dirt/soil materials. Stormwater retention would be provided by two underground retention chambers on the southeast corner of the site and one above ground infiltration basin on the southwest corner of the site. Development would also include desert landscaping and other drought-tolerant planting materials.

Location: The Project is located at the southwest corner of Gerald Ford Drive and Technology Drive, in the City of Palm Desert, Riverside County, California (33.781599, -116.360347). The Project encompasses Accessor's Parcel Numbers 694-580-026 and -027. Land surrounding the parcels includes vacant land to the north and west, commercial development to the east, and vacant land under construction to the south. The Project is located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) boundary. The Project is within the Indio subbasin of the Coachella Valley Groundwater Basin.

Timeframe: Both phases of construction are expected to range from 18 to 24 months with the construction of Phase 1 anticipated to start in late 2023/2024. No timeline is provided for the start of Phase 2.

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 Palm Desert in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. The MND lacks a complete and accurate assessment of biological resources on the Project site. CDFW recommends that additional information and analyses be added to a revised MND, along with avoidance, minimization, and mitigation measures that reduce impacts to less than significant.

Existing Environmental Setting

Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting has not been adequately analyzed in the MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the MND may provide an incomplete analysis of Project-related environmental impacts.

The analysis of environmental conditions is based on the General Plan DEIR for the boundary of the Specific Plan dated in 2016. CDFW is concerned that no biological field assessment was conducted for the MND. The Project site is currently located on and surrounded by vacant land. Wind-blown sands and vegetation that occupy the Project area have the potential to support special-status species. A complete and accurate assessment of the environmental setting and Project-related impacts to biological resources is needed to both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures reduce Project impacts to less than significant.

Mitigation Measures

CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to biological resources to less than significant. To support the City of Palm Desert in ensuring that Project impacts to biological resources are reduced to a level that is less than significant, CDFW recommends adding mitigation measures for Coachella Valley MSHCP compliance, special-status plant surveys, construction noise, and artificial nighttime lightning, as well as revising the mitigation measures for burrowing owl (*Athene cunicularia*) and nesting birds.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Landscaping

Initial Study/Mitigated Negative Declaration (IS/MND) document, Page #2

Issue: The MND lacks a description of the type of landscaping that will be installed and maintained over the life of the Project.

Specific impact: The IS/MND states (p. 2) that the Project site will include desert landscaping and other drought-tolerant planting materials. However, no further details are provided.

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

CDFW Recommendation: To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in any 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/. CDFW also recommends that the MND include recommendations regarding landscaping from Section 4.0 of the CVMSHCP "Table 4-112: Coachella Valley Native Plants Recommended for Landscaping" (pp. 4-180 to 4-182; https://cvmshcp.org/plan-documents/).

COMMENT #2: Timing of Construction and Construction Activities

IS/MND document, Page #2

Issue: The MND does not analyze impacts to biological resources associated with the timing of Project construction and construction activities involving exporting soil.

Specific impact: The IS/MND states (p. 2) the anticipated start date for Phase 1 of the Project but does not indicate an anticipated start of Phase 2. If the Project site is left graded and inactive in the interim period between construction phases, environmental conditions may change. Grading and leaving a site inactive may result in the area becoming occupied by wildlife that utilize disturbed areas (e.g., ground squirrels and burrowing owls).

The IS/MND also states (p. 2) the grading phase will require a net export of 2,620 cubic yards of dirt/soil materials per the Project's preliminary grading plan. Grading and exporting large quantities of soil off-site may result in take of species or their habitats. In compliance with the CVMSHCP, to be considered a covered activity, Permittees should demonstrate that take has been avoided, minimized, and mitigated to the maximum extent practicable (CVMSHCP, Section 3.6).

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

CDFW Recommendations: A revised MND should analyze impacts to biological resources resulting from an extended timeline for Project activities and pauses in construction. The revised MND should acknowledge that wildlife may move into disturbed or graded sites when construction is paused. The revised MND should also acknowledge that preconstruction surveys for biological resources will need to be repeated prior Project activities and after pauses in construction to assess the presence of biological resources and to avoid or reduce impacts to less than significant.

Because of the potential for special-status species to occur on the Project site, a revised MND should analyze the impacts to biological resources resulting from exporting large quantities of soil off-site. The MND should also include Project-specific avoidance and minimization measures that may include, but are not limited to, exclusion devices and buffers where appropriate to avoid or reduce impacts to less than significant. . Additionally, the obligations of CVMSHCP Local Permittees indicate that Permittees shall encourage the opportunity to salvage sand-dependent Covered Species (see "CVMSHCP Compliance" section below).

II. Environmental Setting and Related Impact Shortcoming

COMMENT #3: Assessment of Biological Resources

IS/MND document, Pages #27-30

Issue: The MND does not adequately identify the Project's significant, or potentially significant, impacts to biological resources.

Specific impact: The MND bases its analysis of impacts to biological resources on the General Plan Draft Environmental Impact Report for the boundary of the Specific Plan dated in 2016. The MND lacks a recent general field assessment of biological resources located within the Project footprint and surrounding areas. CDFW is concerned about the potential for special-status species, including those not covered under the CVMSHCP, to occur on the Project site. No focused or protocol-level surveys were performed for the detection of special-status species. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Recent surveys during the appropriate times of the year are needed 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.

Evidence impact would be significant: Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting with respect to biological resources has not been adequately analyzed in the MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the MND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed.

Recommended Potentially Feasible Mitigation Measure:

To establish the existing environmental setting with respect to biological resources, CDFW recommends that a revised MND include the following mitigation measure:

Mitigation Measure BIO-[A]: Assessment of Biological Resources

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

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-1 and 2, and CDFW-recommended MM-BIO [A] through [F] (see Attachment 1).

III. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #4: Burrowing Owl Surveys

IS/MND document, Pages #27-30, MM BIO-1

Issue: CDFW is concerned that no surveys were conducted for burrowing owl (*Athene cunicularia*) and that Mitigation Measure BIO-1 is not sufficient to ensure that potential impacts to burrowing owls are mitigated to a level less than significant.

Specific impact: The IS/MND (p. 29) indicates that the Project site provides suitable habitat for burrowing owls. Additionally, burrowing owls have a high potential to move into disturbed sites prior to and during construction activities. Impacts to burrowing owl from the Project could include take of burrowing owls, their nests or eggs, or destroying nesting or foraging habitat and impacting burrowing owl populations through changes in vegetation via the destruction, conversion, or degradation of burrowing owl habitat.

Evidence impact would be significant: 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.

Recommended Potentially Feasible Mitigation Measure:

CDFW recommends that prior to commencing Project activities for all phases of Project 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 MND includes MM BIO-1, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends the City of Palm Desert include a revised Mitigation Measure BIO-1 in a revised MND as follows, with additions in **bold** and removals in ~~strikethrough~~:

MM BIO-1: Burrowing Owl Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation*. 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, minimization, and monitoring 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 relocation 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 along with proposed relocation actions. 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 prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. ~~To mitigate potential impacts to burrowing owl, two pre-construction surveys shall be conducted in accordance with CDFW protocol. The first survey shall occur between 14 and 30 days prior to ground disturbance, and the second shall occur within 24 hours of the initiation of ground disturbance activities for any phase of development on the Project site.~~

~~• If no owls are detected during those surveys, ground disturbance may proceed~~

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

COMMENT #5: Nesting Birds

IS/MND document, Pages #27-30, MM BIO-2

Issue: CDFW is concerned that no field assessments were conducted for nesting birds and that Mitigation Measure BIO-2 is not sufficient to ensure that potential impacts to nesting birds are mitigated to a level less than significant.

Specific impact: The IS/MND (p. 29) indicates the potential for nesting birds on the Project site. CDFW is concerned about impacts to nesting birds from ground-disturbing activities, vegetation removal, and construction.

Evidence impact would be significant: 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: Fish and Game Code 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.).

Recommended Potentially Feasible Mitigation Measure:

CDFW recommends the revised 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 on-site.** Preconstruction nesting bird surveys shall be performed within 3 days prior to Project activities to determine the presence and location of nesting birds. Although the MND includes Mitigation Measure BIO-2 for nesting birds, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends the City of Palm Desert include a revised Mitigation Measure BIO-2 in a revised MND as follows, with additions in **bold** and removals in ~~strikethrough~~:

MM BIO-2: Avoidance of Nesting Birds

Regardless of the time of year, 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. ~~Migratory Bird Treaty Act If ground disturbance or tree or plant removal is proposed between January 15th and August 31st, a qualified biologist shall conduct a nesting bird survey within 7 to 10 days of initiation of grading onsite. If active nests are reported, then species-specific measures shall be prepared. At a minimum, grading in the vicinity of a nest shall be postponed until the young birds have fledged. For construction that occurs between September 1st and January 31st, no pre-removal nesting bird survey is required.~~
~~• In the event active nests are found, exclusionary fencing shall be placed around the nests until such time as nestlings have fledged. Avoidance buffers shall be 100 to 300 feet from the nests of unlisted songbirds, and 500 feet from the nests of birds-of-prey and listed species.~~

COMMENT #6: Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)

IS/MND document, Pages #27-29

Issue: The Project occurs within the CVMSHCP plan area and is subject to provisions and policies of the CVMSHCP.

Specific impact: The Project does not occur within or share a common boundary with a Conservation Area of the CVMSHCP; however, the Thousand Palms Conservation Area is 1.07 miles northeast of the Project. Based on review of the California Natural Diversity Database (CNDDB) and Biogeographic Information and Observation System (BIOS), the following species that are covered under the CVMSHCP have the potential to occur on the Project site: Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*), Coachella Valley fringe-toed lizard (*Uma inornata*), flat-tailed horned lizard (*Phrynosoma mcallii*), and burrowing owl (*Athene cunicularia*). 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 Palm Desert is the Lead Agency and a Permittee of the CVMSHCP.

With regard to obligations of Local Permittees, Section 6.6.1 of the CVMSHCP indicates that “within and outside conservation areas, on parcels approved for development, the Permittees *shall* encourage the opportunity to salvage Covered sand-dependent species”. The IS/MND states that the surface substrate on the Project site is composed mainly of wind-blown, fine-grained sand. This type of substrate has the potential to be occupied by several Covered Species under the CVMSHCP that are sand-dependent, including Coachella Valley fringe-toed lizard, flat-tailed horned lizard, and Coachella Valley milkvetch. An assessment of biological resources is recommended by CDFW to determine whether these or other send-dependent species are present on the Project site (see “Assessment of Biological Resources” section above).

Evidence impact would be significant: 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/.

Recommended Potentially Feasible Mitigation Measures:

To comply with Local Permittee obligations under the CVMSHCP, CDFW recommends the following mitigation measure be added to a revised MND:

MM BIO-[B]: CVMSHCP Compliance

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

In addition, if the results of the assessment of biological resources (see "Assessment of Biological Resources" section above) indicate the presence of sand-dependent Covered Species, CDFW recommends that the City of Palm Desert coordinate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species. CDFW recommends the following mitigation measure be included in a revised MND:

MM BIO-[C]: Salvage of Sand-Dependent Covered Species

> **Prior to construction and issuance of any grading permit, the City of Palm Desert shall prepare and submit to the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, for review and approval, a plan to salvage sand-dependent CVMSHCP Covered Species within the Project area. The plan shall be prepared by a qualified biologist experienced in surveying for and handling sand-dependent Covered Species. The plan shall include, but not be limited to, the species-specific salvage methods and timing for each sand-dependent Covered Species identified within the Project site and the location(s) where each species will be translocated. Only qualified biologist(s) with appropriate state and federal permits to handle special-status species shall carry out salvage activities.**

COMMENT #7: Special-Status Plants

IS/MND document, Pages #27-29

Issue: The MND does not analyze potential impacts to special-status plants and includes no mitigation measures to avoid or reduce impacts to a level less than significant.

Specific impact: The MND (p. 28) acknowledges that the CVMSHCP area includes a range of sensitive plant species, some of which have been listed as threatened or endangered by federal and state agencies. CDFW is concerned that the habitat assessment for the Specific Plan conducted in 2016 is outdated and inadequate to establish an environmental setting for this Project with respect to special-status plants, including those not covered by the CVMSHCP. Based on a review of CNDDB and BIOS, chaparral sand-verbena (*Abronia villosa* var. *aurita*), a plant species that is not covered under the CVMSHCP and has a California Rare Plant Rank of 1B, has the potential to occur in the Project area. If the presence of special-status plant species is not determined through floristic-based surveys, unauthorized take or disturbance of special-status plant species not covered by the CVMSHCP could occur. CNDDB and BIOS also indicate that Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*), which is a Covered Species under the CVMSHCP and has a California Rare Plant Rank of 1B, has the potential to occur in the Project area.

Evidence impact would be significant: 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.

Recommended Potentially Feasible Mitigation Measure:

CDFW recommends that a thorough, recent, floristic-based assessment of special-status plants is completed at the appropriate time(s) of year before the City of Palm Desert adopts the MND. If any rare, threatened, endangered, or other sensitive plant species are located within the Project site, CDFW recommends that the MND be revised to include appropriate avoidance, minimization, and mitigation measures.

MM BIO-[D]: Special-Status Plant Surveys

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.

COMMENT #8: Construction Noise

IS/MND document, Pages #55-57

Issue: The MND does not analyze impacts to biological resources from construction noise and includes no mitigation measures to avoid or reduce impacts to a level less than significant.

Specific impact: The MND (p. 56) states the Project will increase ambient noise levels from the operation of heavy equipment and machinery which can range from 70 to 90 dBA but includes no analysis of the impacts of construction noise on biological resources. These levels exceed exposure levels that may adversely affect wildlife species at 55 to 60 dBA.

Evidence impact would be significant: 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).

Recommended Potentially Feasible Mitigation Measure:

Because of the potential for construction noise to negatively impact wildlife, CDFW recommends a revised MND include an analysis of impacts to biological resources and

specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant.

MM BIO-[E]: Construction Noise

During all Project construction, the City of Palm Desert shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of 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. The City shall ensure 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.

COMMENT #9: Artificial Nighttime Light

IS/MND document, Page #18

Issue: The MND does not analyze impacts to biological resources from artificial nighttime light and includes no mitigation measures to avoid or reduce impacts to a level less than significant.

Specific impact: The MND (p. 18) indicates the Project will generate light and glare primarily from buildings, landscape lighting, exterior safety and security lighting, and parking lot lighting; however, impacts to biological resources are not analyzed and no mitigation measures are proposed. 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 a revised MND.

Evidence impact would be significant: 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; 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).

Recommended Potentially Feasible Mitigation Measure:

Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends a revised MND include an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant.

MM BIO-[F]: Artificial Nighttime Light

During Project construction and operation, the City of Palm Desert 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/). The City shall ensure use LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper

disposal of hazardous waste, and recycling of 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 MND to assist the City of Palm Desert in identifying and mitigating Project impacts on biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant impacts on biological resources. The CEQA Guidelines (§ 15073.5) indicate that recirculation is required when a new significant effect is identified and additional mitigation measures are necessary. CDFW recommends that a revised MND with a recent and complete assessment of impacts to biological resources, as well as mitigation to avoid and reduce those impacts to less than significant, be recirculated for public comment.

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

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

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

MM BIO-1: Burrowing Owl Surveys Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation*. 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, minimization, and monitoring 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 relocation 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 along with proposed relocation actions. 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 prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities.	**Focused surveys:** Prior to the start of Project-related activities. **Pre-construction surveys:** No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.	City of Palm Desert
MM BIO-2: Avoidance of Nesting Birds Regardless of the time of year, 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	No more than three (3) days prior to vegetation clearing or ground-disturbing activities.	City of Palm Desert

been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.		
MM BIO-[B]: CVMSHCP Compliance Prior to construction and issuance of any grading permit, the City of Palm Desert shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee.	Prior to construction and issuance of any grading permit.	City of Palm Desert
MM BIO-[C]: Salvage of Sand-Dependent Covered Species Prior to construction and issuance of any grading permit, the City of Palm Desert shall prepare and submit to the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, for review and approval, a plan to salvage sand-dependent CVMSHCP Covered Species within the Project area. The plan shall be prepared by a qualified biologist experienced in surveying for and handling sand-dependent Covered Species. The plan shall include, but not be limited to, the species-specific salvage methods and timing for each sand-dependent Covered Species identified within the Project site and the location(s) where each species will be translocated. Only qualified biologist(s) with appropriate state and federal permits to handle special-status species shall carry out salvage activities.	Prior to construction and issuance of any grading permit.	City of Palm Desert
MM BIO-[D]: Special-Status Plant Surveys 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 Palm Desert
MM BIO-[E]: Construction Noise During all Project construction, the City of Palm Desert shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of 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. The City shall ensure 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 Palm Desert
MM BIO-[F]: Artificial Nighttime Light During Project construction and operation, the City of Palm Desert 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/). The City shall ensure use LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and	During Project construction activities and operation.	City of Palm Desert

recycling of lighting that contains toxic compounds with a qualified recycler.		