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Sent via email

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Dune Palms Mixed Use Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2023070217

Dear Cheri Flores:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of La Quinta (City) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA guidelines.¹

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

CDFW ROLE

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

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

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

need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Dune Palms Mixed Use Project

Objective: The Project proposes the development of an approximately 9.4-acre site in La Quinta, California. The Project proposes 4.3 acres of commercial development and 5.1 acres of residential development. The residential portion would be composed of approximately 180 units and would be developed by a third party. The commercial component of the development will consist of a drive-through quick serve restaurant and a car wash. The commercial component is expected to be developed first, while the residential component will be developed at a later date. The Project proposes commercial buildings no more than 31 feet and six inches tall. While the height of the potential residential buildings is not yet known, they would likely be two to three stories tall and would not exceed the maximum height permitted in the zone. The Project is located adjacent to the Whitewater River to the north. The Project proposes the construction of a drainage basin in the southeastern corner of the property. This basin will accept and treat drainage from the half widths of Dune Palms Road and Highway 111. The Project proposes the addition of a storm drain on the east side of the site to convey street drainage to the Whitewater River in high flow conditions. All outdoor lights, including parking lot lighting, will be required to be fully shielded to minimize light pollution. The commercial buildings would be set back from Highway 111 by 50 feet of landscaping and an additional 50 feet of drive through aisles. Landscaping will include drought tolerant vegetation.

Location: The proposed Project is located at the northeast corner of Highway 111 and Dune Palms Road in the City of La Quinta (City), in Riverside County, California. The Project site encompasses Assessor's Parcel No. 600-030-018. The Project is located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) Area and outside of a Conservation Area.

Timeframe: The MND proposes Project construction activities over a 2.5-year period. The commercial component is expected to be developed first, while the residential component will be developed at a later date.

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

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information to facilitate a meaningful review by CDFW, including a complete and accurate Project description. CDFW requests that additional information and analyses be added to a revised MND, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

Project Description

Compliance with 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.

The MND lacks a discussion of plans for artificial nighttime lighting. CDFW requests that the MND is revised to include design plans for artificial nighttime lighting and lightning specifications. Artificial nighttime lighting can negatively impact biological resources in a variety of ways as discussed in the Artificial Nighttime Lightning section below. To conduct a meaningful review and provide biological expertise on how to protect fish and wildlife resources, CDFW requires a complete and accurate Project description.

Mitigation Measures

CEQA requires that a MND include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support the City in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for artificial nighttime lighting, CVMSHCP compliance, and CDFW's Lake and Streambed Alteration Program, as well as revising the mitigation measures for an assessment of biological resources, nesting birds, and burrowing owl.

1) Assessment of Biological Resources

Page 28 of the Project's Biological Resources Assessment dated December 20, 2022 (Biological Assessment), indicates that "fourteen special status plant species not covered by the CVMSHCP have potential to occur onsite: chaparral sand-verbena, Borrego milk-vetch, gravel milk-vetch, glandular ditaxis, California ditaxis, Abram's spurge, Arizona spurge, flat-seeded spurge, Newberry's velvet-mallow, ribbed cryptantha, Torrey's box-thorn, slender cottonheads, narrow-leaved sandpaper plant, and purple stemodia." Page 8 of the Biological Assessment indicates that a field assessment was conducted on November 21, 2022, between 1240 and 1400, and that "pedestrian transects were walked around and through the site." The single field assessment was conducted outside of the bloom period for many of the special status plant species that have the potential to occur on the Project site. CDFW recommends that the City include in a revised MND the results of a thorough floristic-based assessment of special-status plants and natural communities performed by a qualified biologist and following CDFW's Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities (CDFW 2018 or most recent version). Based on findings from a recent floristic-based assessment, CDFW recommends that the MND is revised to include an analysis of direct, indirect, and cumulative impacts to biological resources and identification of appropriate avoidance, minimization, and mitigation measures. Further, page 25 of the Biological Assessment indicates that Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*) and Mecca aster (*Xylorhiza cognata*), both Covered Species under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), have the potential to occur on the Project site. CDFW also recommends that focused surveys include any CVMSHCP Covered Species that have the potential to occur onsite, as discussed in the CVMSHCP section below.

Recent and complete information on biological resources; analysis of a Project's direct, indirect, and cumulative impacts; and appropriate avoidance, minimization, and mitigation measures support the City in demonstrating that Project impacts to biological resources are avoided or reduced to less than significant. Although the MND includes Mitigation Measure BIO-1, CDFW considers the measure to be inadequate in scope and timing to reduce impacts to less than significant. CDFW recommends that the City revise Mitigation Measure BIO-1 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-1: Assessment of Biological Resources

Prior to Project construction activities for all development phases of the Project, 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. A

~~preconstruction survey is recommended for special status plants. If populations of any of the species identified in the Biological Resources Assessment are detected on the site during the survey, the plants, topsoil, and/or seed should be salvaged and translocated to a site with long-term conservation value.~~

2) Nesting Birds

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

Page 9 of the Biological Assessment indicates that the site contains small areas with "desert saltbush scrub, Sonoran creosote bush scrub, and mesquite hummocks," which are suitable habitat for nesting birds. Table 6 of the Biological Assessment identifies a number of birds that have the potential to nest onsite, including black-tailed gnatcatcher (*Polioptila melanura*). The MND includes Mitigation Measure BIO-3, which indicates that "either project-related disturbance during the nesting season (1 February to 31 August) must be avoided, or nesting bird surveys must be conducted by a qualified ornithologist or biologist immediately prior to site disturbance during the nesting season." CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided **any time birds are nesting on-site**. CDFW considers the Mitigation Measure BIO-3 to be insufficient in scope and timing to reduce impacts to nesting birds to less than significant.

CDFW recommends the City revise Mitigation Measure BIO-3, with additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-3: 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. ~~Either project-related disturbance during the nesting season (1 February to 31 August) must be avoided, or nesting bird surveys must be conducted by a qualified ornithologist or biologist immediately prior to site disturbance during the nesting season. If an active nest is detected, a buffer must be established around it and no work would be permitted in that area near the nest until young have fledged. While there is no established protocol for nest avoidance, the CDFW generally recommends avoidance buffers of about 500 feet for birds-of-prey and listed species, and 100 – 300 feet for unlisted songbirds.~~

3) *Burrowing Owl*

Burrowing owl (*Athene cunicularia*) is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

Regarding the suitability of habitat for burrowing owl, page 28 of the Biological Assessment indicates that “marginal habitat is present onsite for the owl, but the isolated nature of the site and limited burrowing opportunities observed make the possibility of occurrence quite low.” Page 3 of the MND states that the Project site is “vacant and undeveloped, with sparse vegetation.” Recent aerial imagery on Google Earth PRO shows the site contains bare soil across much of the Project site with a sparse cover of shrubs. In California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs, level to gentle topography and well-

drained soils.² Grassland, shrub steppe, and desert are naturally occurring habitat types used by the species. In addition, burrowing owls may occur in some agricultural areas, ruderal grassy fields, vacant lots and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in proximity.³ The Project site contains habitat suitable for burrowing and foraging activities for burrowing owl. Unprocessed data from California Natural Diversity Database indicate burrowing owl pairs using burrows within 0.55 miles to the east of the Project site, and burrowing owls have been observed within the Whitewater River both upstream and downstream of the Project site by other development projects including the CV Link Project.

Regarding surveys for burrowing owl, page 8 of the Biological Assessment indicates that a single field assessment was conducted on November 21, 2022, from 1240 to 1400 and that “pedestrian transects were walked around and through the site.” The Biological Assessment lacks details on if the single field assessment included a habitat assessment for burrowing owl and if the habitat assessment covered the entire Project area and an appropriate buffer area within the adjacent Whitewater River. The *Staff Report on Burrowing Owl Mitigation* (CDFG 2012⁴) recommends that a habitat assessment for burrowing owl includes conducting at least one visit covering the entire potential project/activity area including areas that will be directly or indirectly impacted by the project. Additionally, the Biological Assessment lacks detailed results from the field assessment concerning burrowing owl, including but not limited to the locations of suitable burrows and burrowing owl sign, within the Project site and an appropriate buffer area within the adjacent Whitewater River. Results of the field assessment are limited to a description of the site containing “limited burrowing opportunities” (page 28 of the Biological Assessment) and several photos of potential burrow surrogates located onsite (Appendix 4 of the Biological Assessment). The single field assessment was also

² Haug, E. A., B. A. Millsap, and M. S. Martell. 1993. Burrowing owl (*Speotyto cunicularia*), in A. Poole and F. Gill, editors, *The Birds of North America*, The Academy of Natural Sciences, Philadelphia, Pennsylvania, and The American Ornithologists’ Union, Washington, D.C., USA.

³ Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. *California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California*. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.

⁴ California Department of Fish and Game (CDFG). 2012. Staff report of burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html

conducted in November during the non breeding season for burrowing owl. The *Staff Report on Burrowing Owl Mitigation* indicates that it is most effective to conduct breeding and non-breeding season surveys. CDFW recommends that the City follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. The *Staff Report on Burrowing Owl Mitigation*, specifies three steps for project impact evaluations for burrowing owl:

- A habitat assessment;
- Surveys; and
- An impact assessment

As stated in the *Staff Report on Burrowing Owl Mitigation*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

CDFW recommends that the MND is revised to include recent findings of a burrowing owl habitat assessment covering the entire Project site and appropriate buffer within the Whitewater River, focused surveys, and an impact assessment. If occupied burrows are located within or near the Project site, including the Whitewater River located to the north of the Project site, avoidance, minimization, and mitigation measures need to be identified in the MND to support the Project applicant in avoiding the unlawful take of burrowing owls and their nests and eggs.

Although the MND includes Mitigation Measure BIO-2 for burrowing owls, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to less than significant. CDFW recommends that the City revise Mitigation Measure BIO-2, with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-2: Burrowing Owl Surveys

No less than 60 days prior to the start of Project-related activities, a burrowing owl habitat assessment shall be conducted by a qualified biologist according to the specifications of the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012 or most recent version).

If the habitat assessment demonstrates suitable burrowing owl habitat, then 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 proponent 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, mitigation, 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 minimization and 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 Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS 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 and USFWS for review and approval prior to commencing Project activities. ~~Two burrowing owl take avoidance surveys should be conducted in line with CDFW protocols for burrowing owls. The first survey should occur between 14 and 30 days prior to Project-related ground disturbance and the second within 24 hours of ground disturbance. Avoidance or relocation measures should be undertaken in consultation with CDFW if the species is identified on the site, and buffers established as required.~~

4) *Artificial Nighttime Lighting*

Page 17 of the MND indicates that “all outdoor lights, including parking lot lighting, will be required to be fully shielded to minimize light pollution. The Project proponent will be required to submit a photometric lighting plan, which will be reviewed by the City as part of the entitlement process. This will ensure that no new sources of

light would adversely affect daytime or nighttime views in the area. While the proposed buildings would introduce potential sources of glare into the area, this glare would not be expected to exceed levels typical of surrounding developments. Given that any light and glare emitted by the Project is expected to be similar to that of surrounding commercial developments, and that the Project will be required to comply with the City's regulations regarding outdoor lighting, impacts are expected to be less than significant." The MND lacks additional details on the Project's lighting plans and lighting specifications. CDFW requests that the MND is revised to include the Project's lightning plans and lightning specifications to be used during Project construction activities and long-term operations of the Project to allow CDFW to conduct a meaningful review and provide biological expertise on activities that have the potential to adversely affect fish and wildlife resources.

Additionally, because the Project is located adjacent to the Whitewater River, an area that supports habitat for nesting birds including burrowing owl (see Burrowing Owl section), migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife, CDFW recommends the MND is revised to include an analysis of the direct, indirect, and cumulative impacts of artificial nighttime lighting expected to adversely affect biological resources within the adjacent Whitewater River. Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; and the detection of resources and natural enemies; and navigation.⁵ Many species use photoperiod cues for communication (e.g., bird song⁶), determining when to begin foraging,⁷ behavioral thermoregulation,⁸ and migration.¹⁰ Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.⁹

⁵ Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. *Biological Reviews*, 88.4: 912-927.

⁶ Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130-139.

⁷ Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123-1127.

⁸ Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98-108.

⁹ Longcore, T., and C. Rich. 2004. Ecological light pollution -Review. *Frontiers in Ecology and the Environment* 2:191-198.

To support City in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends that City add to a revised MND the following mitigation measure:

Mitigation Measure BIO-[A]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the Project Sponsor and City of La Quinta shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City of La Quinta shall ensure that all lighting for the Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare into surrounding areas including the Whitewater River or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The City of La Quinta shall ensure use of 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.

5) Coachella Valley Multiple Species Habitat Conservation Plan

Page 25 of the Biological Assessment indicates that “of the remaining 33 species which have some occurrence potential, eight are fully covered and conserved through participation in the CVMSHCP: Coachella Valley milk-vetch, Mecca-aster, Coachella giant sand treader cricket, flat-tailed horned lizard, Coachella Valley fringe-toed lizard, western yellow bat, Palm Springs pocket mouse, and Coachella Valley (Palm Springs) round-tailed ground squirrel. Since potential impacts to these nine species will be mitigated through participation in the CVMSHCP they will also not be discussed further.” The City of La Quinta, as a Local Permittee under the CVMSHCP, receives coverage for the *incidental* take of Covered Species for Covered Activities. Within the CVMSHCP Plan Area and outside of a Conservation Area, Local Permittees have obligations concerning the protection of Covered Species. Per CVMSHCP Section 6.6.1 (Obligations of Local Permittees), within *and* outside conservation areas, Local Permittees must “ensure compliance for public and private projects with all applicable Requirement Measures in Section 4.4,” and “on parcels approved for Development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species in accordance with the Implementation Manual.” CDFW recommends the City of La Quinta consult with the Coachella Valley Conservation Commission, the Implementing Entity for the CVMSHCP, on its obligations to avoid and minimize impacts to Covered Species within the Project area. CDFW also recommends that the MND and its supporting documents such as the Biological Assessment are revised to include the findings from focused surveys documenting the presence of any CVMSHCP Covered Species within the Project site and surrounding buffer and any applicable avoidance

and minimization measures that are required under the CVMSHCP.

To document the City's obligation as a Local Permittee under the CVMSHCP to impose a local development mitigation fee for this Project, CDFW recommends the City add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[B]: CVMSHCP Compliance

Prior to construction and issuance of any grading permit, the City of La Quinta 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 and transfer of revenues to the Coachella Valley Conservation Commission.

With regard to the City's obligation to encourage the opportunity to salvage Covered sand-dependent species, CDFW recommends the City include in a revised MND a mitigation measure on the preparation of a plan for salvaging sand-dependent Covered Species. CDFW recommends the following mitigation measure be added to a revised MND:

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

Prior to construction and issuance of any grading permit, the City of La Quinta 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.

6) *CDFW Lake and Streambed Alteration Program*

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. 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.

It may also apply to work undertaken within the flood plain of a body of water.

Page 52 of the MND indicates that the Project “proposes the addition of a storm drain on the east side of the site to convey drainage from the retention basin at the southeast corner of the site to the Whitewater River in high flow conditions.” Page 53 of the MND further indicates that “according to the Hydrology Report, runoff on the subject site will flow into the retention basin, and will enter a storm drain in the shared drive aisle on the eastern side of the site, which will discharge into the Whitewater River. The Whitewater River is an engineered drainage channel designed for 100-year storm runoff. The storm drain proposed by the Project will also be sized to accommodate the 100-year storm.” The MND does not indicate if the applicant will notify CDFW per Fish and Game Code section 1602. Based on information provided in the MND, the construction of the outlet of the proposed storm drain into the Whitewater River may result in substantially changing material on the bank of the Whitewater River. CDFW recommends the Project proponent notify CDFW per Fish and Game Code section 1602. Accordingly, CDFW recommends the City add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[D]: CDFW Lake and Streambed Alteration Program

Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

7) Landscaping

Page 17 of the MND indicates that the Project landscaping will “drought tolerant vegetation, as required by the Coachella Valley Water District and City’s landscaping ordinance, and shade-providing trees.” The MND lacks additional details on landscaping plans and the plant species proposed for landscaping. 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/>).

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSIONS

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project’s significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information for a meaningful review of impacts to biological resources, including a complete project description. The CEQA Guidelines indicate that recirculation is required when insufficient information in the MND precludes a meaningful review (§ 15088.5) or when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that a revised MND, including a complete Project description with lighting plans and specifications, be recirculated for public comment. CDFW also recommends that revised and additional mitigation measures as described in this letter be added to a revised MND.

CDFW personnel are available for consultation regarding biological resources and strategies to avoid and minimize impacts. Questions regarding this letter or further

Cheri Flores, Project Planner
City of La Quinta
August 2, 2023
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coordination should be directed to Jacob Skaggs, Environmental Scientist, at jacob.skaggs@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
<p>Mitigation Measure BIO-1: Assessment of Biological Resources</p> <p>Prior to Project construction activities for all development phases of the Project, 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.</p>	<p>Timing: Prior to Project construction activities for all development phases of the Project.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of La Quinta</p> <p>Monitoring and Reporting: City of La Quinta</p>
<p>Mitigation Measure BIO-3: Nesting Birds</p> <p>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.</p>	<p>Timing: No more than 3 days prior to vegetation removal or ground-disturbing activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of La Quinta</p> <p>Monitoring and Reporting: City of La Quinta</p>

<p>Mitigation Measure BIO-2: Burrowing Owl Surveys</p> <p>No less than 60 days prior to the start of Project-related activities, a burrowing owl habitat assessment shall be conducted by a qualified biologist according to the specifications of the <i>Staff Report on Burrowing Owl Mitigation</i> (Department of Fish and Game, March 2012 or most recent version).</p> <p>If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report on Burrowing Owl Mitigation</i>. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent 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, mitigation, 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 minimization and 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 Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing</p>	<p>Timing: Habitat assessment: No less than 60 days prior to the start of Project related activities.</p> <p>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.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of La Quinta and Project applicant</p> <p>Monitoring and Reporting: City of La Quinta</p>
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<p>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 and USFWS for review and approval prior to commencing Project activities.</p>		
<p>Mitigation Measure BIO-[A]: Artificial Nighttime Lighting</p> <p>Throughout construction and the lifetime operations of the Project, the Project Sponsor and City of La Quinta shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City of La Quinta shall ensure that all lighting for the Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare into surrounding areas including the Whitewater River or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City of La Quinta shall ensure use of 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.</p>	<p>Timing: Throughout construction and the lifetime operations of the Project</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of La Quinta and Project applicant</p> <p>Monitoring and Reporting: City of La Quinta</p>
<p>Mitigation Measure BIO-[B]: CVMSHCP Compliance</p> <p>Prior to construction and issuance of any grading permit, the City of La Quinta 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 and transfer of revenues to the Coachella Valley Conservation Commission.</p>	<p>Timing: Prior to construction and issuance of any grading permit.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of La Quinta</p> <p>Monitoring and Reporting: City of La Quinta</p>
<p>Mitigation Measure BIO-[C]: Salvage of Sand-Dependent Covered Species</p> <p>Prior to construction and issuance of any grading permit, the City of La Quinta 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</p>	<p>Timing: Prior to construction and issuance of any grading permit.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of La Quinta</p> <p>Monitoring and Reporting: City of La Quinta</p>

<p>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.</p>		
<p>Mitigation Measure BIO-[D]: CDFW Lake and Streambed Alteration Program</p> <p>Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Timing: Prior to construction and issuance of any grading permit.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project applicant</p> <p>Monitoring and Reporting: City of La Quinta</p>