



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



August 23, 2023
Sent via email

Patricia Villagomez
Principal Planner
City of Desert Hot Springs
11999 Palm Drive
Desert Hot Springs, CA 92240



Green Day Village (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2023070566

Dear Patricia Villagomez:

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

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.

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: LA World Construction

Objective: The Project proposes the construction of a mixed-use residential and commercial development on an undeveloped 37.29-acre site. The Project would include 608 residential units including 552 units in 92 two-story, six-unit buildings and 56 studio loft apartments in one two-story building. The project proposes commercial uses in the eastern part of the project site, including two restaurant/food service buildings; seven retail uses; a two-story medical office building; and two recycling centers. Six farming areas would be provided – three near the south site boundary and three near the north site boundary; one of the areas for is aquaponics/aquaculture. Site access would be via three driveways from Palm Drive. The main entrance would be in the center of the site's frontage on Palm Drive and would lead to a roundabout connecting to two driveways into the residential portion of the project. The northerly entrance would be near the northeast corner of the site and would connect to a driveway around the northern perimeter of the residential area. The southerly entrance would be near the southeast corner of the site and would connect to a driveway along the south perimeter of the residential area.

The Project proposes a V-channel lined with rip-rap that would extend along the northern and western site boundaries to collect and convey stormwater from offsite away from the proposed developments. A retention pond would be built next to the north site boundary and the V-channel. A seasonal arroyo would extend north to south through part of the central portion of the site. Regional drainage in a 100-year flood would pass through the project site from north to south in corridors. All building pads would be elevated above the 100-year flood elevations.

The project proposes approximately 501,500 square feet (11.5 acres) of drought-tolerant landscaping consisting of 10.1 acres in the residential area of the site and 1.4 acres in the commercial area.

Location: The proposed Project area is 38.34 acres located on the West side of Palm Drive between 18th Avenue and 20th Avenue within the City of Desert Hot Springs. The Project is within APN 657-280-003 The Project site is located outside of, but immediately adjacent to, the Willow Hole Conservation Area of the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

Timeframe: The proposed Project is estimated to take approximately 2.5 years to constructed from early 2024 to late 2026.

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 lighting specifications. Artificial nighttime lighting can negatively impact biological resources in a variety of ways as discussed in the Artificial Nighttime Lighting 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 and salvage of covered sand-dependent species, as well as revising the mitigation measures for nesting birds, burrowing owl, and desert tortoise.

1) 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 4.21-1 of the MND indicates that "the Project site contains suitable habitat for [...] nesting birds." The MND includes Mitigation Measure BIO-4 (Pre-construction Breeding Bird Survey) for nesting birds, which indicates that "if project activities cannot be avoided during February 1 through September 1, a qualified biologist will conduct a pre-construction breeding bird survey for breeding birds and active nests or potential nesting sites within the limits of project disturbance." 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**. The timing of the nesting season varies depending on factors such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW recommends the completion of nesting bird surveys regardless of the time of year to ensure compliance with all applicable laws pertaining to nesting and migratory birds. CDFW considers the Mitigation Measure BIO-4 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-4, with additions in **bold** and removals in ~~strike through~~:

Mitigation Measure BIO-4: 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.

~~To maintain compliance with the MBTA and Fish and Game Code, and to avoid impacts or take of migratory non-game breeding birds, their nests, young, and eggs, the following measures will be implemented. The measures below will help to reduce direct and indirect impacts caused by construction on migratory non-game breeding birds to less than significant levels. Project activities that will remove or disturb potential nest sites, such as open ground, trees, shrubs, grasses, burrows, during the breeding season would be a potential significant impact if migratory non-game breeding birds are present. Project activities that will remove or disturb potential nest sites will be scheduled outside the breeding bird season to avoid potential direct impacts to migratory non-game breeding birds protected by the MBTA and Fish and Game Code. The breeding bird nesting season is typically from February 1 through September 1, but can vary slightly from year to year, usually depending on weather conditions. Removing all physical features that could potentially serve as nest sites will also help to prevent birds from nesting within the project site during the breeding season and during construction activities. If project activities cannot be avoided during February 1 through September 1, a qualified biologist will conduct a pre-construction breeding bird survey for breeding birds and active nests or potential nesting sites within the limits of project disturbance. The survey will focus on direct and indirect evidence of nesting. The biologist will make every effort to avoid nest predation as a result of survey and monitoring efforts. The survey will be conducted between five to seven days prior to the initiation of construction activities, including staging and ground disturbance. If no breeding birds or active nests are observed during the pre-construction survey or they are observed and will not be impacted, project activities may begin and no further mitigation will be required. If a breeding bird territory or an active bird nest is located during the pre-construction survey and will potentially be impacted, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a~~

~~minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting.~~

2) 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.”

Page 4.21-1 of the MND indicates that the “project site contains suitable habitat for burrowing owl.” Page 4.4-8 of the MND states that “two fossorial mammal species, white-tailed antelope squirrel (*Ammospermophilus leucurus*) and California ground squirrel (*Otospermophilus beecheyi*), that both create burrows that are suitable for BUOW were observed onsite.” Page 8-2 of the Project’s Draft Biological Resources Evaluation Report (Biological Assessment) indicates that “although BUOW was not detected onsite during the general wildlife surveys, and even if they are not detected during the breeding and non-breeding season surveys, the BSA [Biological Study Area] contains suitable habitat to potentially support BUOW, including sparsely vegetated open areas with friable soils. It is thus possible that BUOW could colonize the site between the completion of the surveys and the beginning of ground-disturbing work.” Although the MND includes Mitigation Measures BIO-3.1, BIO-3.2, BIO-3.3, and BIO-3.4 for burrowing owl, CDFW considers these measures to be inadequate in scope and timing to reduce impacts to less than significant. CDFW recommends that City replace Mitigation Measures BIO-3.1, BIO-3.2, BIO-3.3, and BIO-3.4 with the following mitigation measure:

Mitigation Measure BIO-3.1: Burrowing Owl Avoidance

Suitable burrowing owl habitat has been confirmed on the Project site and surrounding area; therefore, focused burrowing owl surveys shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (2012 or most recent version) prior to vegetation removal or ground-disturbing activities. 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 and USFWS 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.

3) Desert Tortoise

Page 4.4-6 of the MND indicates that with regard to desert tortoise, "there is suitable habitat on the project site, including sources of food and burrowing habitat." Page 4.4-12 of the MND includes Mitigation Measure BIO-2 (Desert Tortoise Take Avoidance Survey), which indicates that "should desert tortoise presence be confirmed during the survey, then coordination with USFWS may be required." CDFW considers the measure to be inadequate in scope to reduce impacts to less than significant.

CDFW recommends the City revise Mitigation Measure BIO-2 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-2: Desert Tortoise Focused and Pre-Construction Surveys

According to Section 9.6.1.4 of the MSHCP, take avoidance surveys are required for projects located inside and outside of Conservation Areas. **Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in Preparing for Any Action that May**

Occur within the Range of the Mojave Desert Tortoise (USFWS 2019; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys. If desert tortoise is found to be present, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

No more than 14 calendar days prior to start of project activities, **and after any pause in Project activities lasting 30 days or more**, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS *Preparing for Any Action That May Occur Within the Range of the Mojave Desert Tortoise (Gopherus agassizii)* (USFWS 2019). Pre-construction surveys shall be completed using perpendicular survey routes **and 100% visual coverage for desert tortoise and their sign** within the **Project** site and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. **Results of the surveys shall be submitted to CDFW prior to construction start. If the pre-construction surveys confirm desert tortoise absence, the qualified biologist shall ensure desert tortoise do not enter the Project area. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.** ~~Should desert tortoise presence be confirmed during the survey, then coordination with USFWS may be required.~~ In this case, unforeseen delays to the project may occur.

4) Artificial Nighttime Lighting

Page 4.1-6 of the MND states that the “Project development would add parking lot lights, exterior and interior building lights, and vehicle lights to the project site. [...] All exterior lighting installed by the project would comply with City of Desert Hot Springs Municipal Code Section 14.70.170, which requires shielding and filtering on most outdoor lighting and prohibits certain types of outdoor lighting (QCode, 2022).” Page 4.4-18 of the MND includes Mitigation Measure BIO-9 (General Vegetation and Wildlife Avoidance and Protection Measures) which states “to minimize construction-related mortalities of nocturnally active species such as mammals and snakes, it is recommended that all work be conducted during daylight hours. Nighttime work (and use of artificial lighting) will not be permitted unless specifically authorized. If required, night lighting will be directed away from the preserved open space areas to protect species from direct night lighting. All unnecessary lights will be turned off at night to avoid attracting wildlife such as insects, migratory birds, and bats.” The MND also

includes Mitigation Measure BIO-10 (MSHCP Section 4.5 Land Use Adjacent Guidelines) on page 4.4-19: “4.5.3 Lighting: For proposed Development adjacent to or within a Conservation Area, lighting shall be shielded and directed toward the developed area. Landscape shielding or other appropriate methods shall be incorporated in project designs to minimize the effects of lighting adjacent to or within the adjacent Conservation Area in accordance with the guidelines to be included in the Implementation Manual.”

While the MND includes avoidance and minimization measures for the Project to minimize lighting impacts and comply with the CVMSHCP Land Use Adjacency Guidelines, the MND lacks any additional details on the Project’s lighting plans and lighting specifications. New sources of lighting associated with the Project have the potential to negatively impact biological resources in the Willow Hole Conservation Area and the Covered Species it protects including Coachella Valley fringe-toed lizard (*Uma inornata*), the Coachella Valley round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), and Palm Springs pocket mouse (*Perognathus longimembris bangsi*). Of particular importance, CVMSHCP Section 4.3.8 indicates that “the Plan seeks to maintain a Linkage between this area [the Willow Hole Conservation Area] and the Upper Mission Creek/Big Morongo Canyon Conservation Area for the Palm Springs pocket mouse.” Small mammals such as Palm Springs pocket mouse are considered corridor-dwelling species in that they have relatively small home ranges and dispersal abilities and require suitable habitat within biological corridors to support multiple generations of these species to facilitate gene flow.² The Project site is located adjacent to habitat that supports CVMSHCP Covered Species and is an important biological corridor for Palm Springs pocket mouse. CDFW requests that the MND is revised to include details on the Project’s lighting plans and lighting 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.

Also, page 4.1-6 of the MND states that the “while project lighting would be an increase in lighting on the project site, the types of lights and light levels would be typical of developed areas of Desert Hot Springs and would not adversely affect nighttime views in the area.” CDFW emphasizes that new sources of lighting an area, even if they are similar in type and intensity compared to existing lighting, have an additive effect and increase the total light illumination at any given point in the environment.

Additionally, because the Project is located adjacent to the Willow Hole Conservation Area, an area that supports habitat for nesting birds, migratory birds that fly at night,

² Price, M. V., P. A. Kelly, and R. L. Goldingay. 1994. Distances moved by Stephens’ kangaroo rat (*Dipodomys stephensi Merriam*) and implications for conservation. *Journal of Mammalogy* 75:929–939.

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 Willow Hole Conservation Area. 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.³ Many species use photoperiod cues for communication (e.g., bird song⁴), determining when to begin foraging,⁵ behavioral thermoregulation,⁶ 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.⁷

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 Desert Hot Springs 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 Desert Hot Springs 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 Willow Hole Conservation Area or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The City of Desert Hot Springs 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.

³ 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.

⁴ Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

⁵ Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

⁶ Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

⁷ Longcore, T., and C. Rich. 2004. Ecological light pollution -Review. *Frontiers in Ecology and the Environment* 2:191–198.

5) Coachella Valley Multiple Species Habitat Conservation Plan

Page 4.4-3 of the MND indicates Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*; CVMSHCP Covered Species) “was determined to have a moderate potential to occur” on the Project site. The Project is also located entirely within modeled habitat for Coachella Valley milkvetch as determined by the CVMSHCP. Section 6.6.1 of the CVMSHCP (Obligations of Local Permittees) states that *within and outside Conservation Areas* “on parcels approved for Development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species in accordance with the Implementation Manual.”

To fulfil this CVMSHCP obligation as a Local Permittee, CDFW recommends that the City include the following mitigation measure in a revised MND:

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

Prior to vegetation removal or ground-disturbing activities, the City of Desert Hot Springs and Project Sponsor, in coordination with the Coachella Valley Conservation Commission, will conduct a salvage of top soil and/or seeds for all areas within the Project site where Coachella Valley milkvetch are identified during pre-construction rare plant surveys (see Mitigation Measure BIO-1).

6) Landscaping

Page 3-8 of the MND indicates that “project proposes approximately 501,500 square feet (11.5 acres) of drought-tolerant landscaping consisting of 10.1 acres in the residential area of the site and 1.4 acres in the commercial area.” 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 coordination should be directed to Jacob Skaggs, Environmental Scientist, at jacob.skaggs@wildlife.ca.gov.

Patricia Villagomez, Principal Planner
City of Desert Hot Springs
August 23, 2023
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Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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

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

Vincent James, U.S. Fish and Wildlife Service
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Peter Satin, Coachella Valley Conservation Commission
psatin@cvag.org

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

| Mitigation Measures | Timing and Methods | Responsible Parties |
|---|---|---|
| <p>Mitigation Measure BIO-4: 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 Desert Hot Springs and Project applicant</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p> |
| <p>Mitigation Measure BIO-3.1: Burrowing Owl Avoidance</p> <p>Suitable burrowing owl habitat has been confirmed on the Project site and surrounding area; therefore, focused burrowing owl surveys shall be conducted in accordance with the Staff Report on Burrowing Owl Mitigation (2012 or most recent version) prior to vegetation removal or ground-disturbing activities. 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 and USFWS for review</p> | <p>Timing: Focused surveys: Prior to vegetation removal or ground-disturbing activities. Pre-construction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to</p> | <p>Implementation: City of Desert Hot Springs and Project applicant</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p> |

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| <p>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 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.</p> | <p>ground disturbance.</p> <p>Methods: See Mitigation Measure</p> | |
| <p>Mitigation Measure BIO-2: Desert Tortoise Focused and Pre-Construction Surveys</p> <p>According to Section 9.6.1.4 of the MSHCP, take avoidance surveys are required for projects located inside and outside of Conservation Areas. Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in Preparing for Any</p> | <p>Timing: Focused surveys: Prior to start of Project activities. Pre-construction surveys: No more than 14 calendar days prior to start of Project activities and after any</p> | <p>Implementation: City of Desert Hot Springs and Project applicant</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p> |

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| <p>Action that May Occur within the Range of the Mojave Desert Tortoise (USFWS 2019; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys. If desert tortoise is found to be present, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.</p> <p>No more than 14 calendar days prior to start of project activities, and after any pause in Project activities lasting 30 days or more, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS Preparing for Any Action That May Occur Within the Range of the Mojave Desert Tortoise (<i>Gopherus agassizii</i>) (USFWS 2019). Pre-construction surveys shall be completed using perpendicular survey routes and 100% visual coverage for desert tortoise and their sign within the Project site and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the surveys shall be submitted to CDFW prior to construction start. If the pre-construction surveys confirm desert tortoise absence, the qualified biologist shall ensure desert tortoise do not enter the Project area. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.</p> | <p>pause in Project activities lasting 30 days or more.</p> <p>Methods: See Mitigation Measure</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 Desert Hot Springs 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 Desert Hot Springs shall ensure that all</p> | <p>Timing: Throughout construction and the lifetime operations of the Project</p> | <p>Implementation: City of Desert Hot Springs and Project applicant</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p> |

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| <p>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 Willow Hole Conservation Area or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City of Desert Hot Springs 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>Methods: See Mitigation Measure</p> | |
| <p>Mitigation Measure BIO-[B]: Salvage of Covered Sand-Dependent Species</p> <p>Prior to vegetation removal or ground-disturbing activities, the City of Desert Hot Springs and Project Sponsor, in coordination with the Coachella Valley Conservation Commission, will conduct a salvage of top soil and/or seeds for all areas within the Project site where Coachella Valley milkvetch are identified during pre-construction rare plant surveys (see Mitigation Measure BIO-1).</p> | <p>Timing: Prior to vegetation removal or ground-disturbing activities</p> <p>Methods: See Mitigation Measure</p> | <p>Implementation: City of Desert Hot Springs and Project applicant</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p> |