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June 24, 2024
Sent via email

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Palm Springs Fulfillment Center Project (PROJECT)
Draft Environmental Impact Report (DEIR)
SCH# 2023080091

Dear Glenn Mlaker:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from the City of Palm 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

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.

activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: PS Canyon Development, LLC

Objective: The proposed Project includes to develop an industrial building on approximately 38 acres on the northwest corner of Indian Canyon Drive and 19th Avenue, in the City of Palm Springs. The Project proposes a two-story industrial building with associated improvements such as paved parking spaces and drive aisles, a detention basin, and three gated access points. The two-story facility has a proposed building area of 739,360 square feet. Additionally, the proposed Project will connect to existing offsite infrastructure to provide electricity, natural gas, water, and sewer services to the Project along Indian Canyon Drive and 19th Avenue.

For security purposes, the Project will provide nighttime lighting to safely illuminate the parking areas, entrances, signs, and walkways. According to the photometric plan, Project light fixtures will consist of downward-oriented post-mounted and wall-mounted fixtures located throughout the Project. The wall-mounted fixtures will provide lighting for building entryways, sidewalks, and general exterior lighting. The post-mounted fixtures are proposed to be located in the parking lot areas and along the paved driveways. The downward-oriented fixtures are designed to not only provide light on the Project site, but also to reduce the amount of light emitted towards adjacent properties.

The Project will include approximately 4.15 acres of landscaped and retention areas, including one landscaped retention basin located along the southern boundary, and trees, shrubs, and accents proposed along the Project's eastern and southern sides. Landscaping will include drought-tolerant trees (24-inch boxes), 12-foot palms, and ground covers (15-gallon) typically found in the region, such as willow acacia, desert museum palo verde, thornless honey mesquite, and date palm. Shrubs and accent plantings proposed for the Project include outback sunrise emu bush, new gold lantana, Lindheimer's muhly, firecracker plant, various agave, cactus, yucca, and aloe. Fractured rock, and decomposed granite will provide ground cover. Exterior irrigation will use drip or micro-spray applicators.

Location: The proposed Project is situated on the northwest corner of Indian Canyon Drive and 19th Avenue in the City of Palm Springs, approximately 0.32 miles north of the Interstate 10 freeway in the City's industrial land use district. The Project is surrounded by vacant land to the north, wind energy facilities to the west, 19th Avenue and existing commercial to the south, and Indian Canyon Drive and industrial uses to the east, within the City of Desert Hot Springs's jurisdiction. The location of the Project can be described as a portion of Section 15, Township 3 South, Range 4 East, San Bernardino Meridian, and at Latitude 33°54'44" N, Longitude 116°32'50" W. Accessor's Parcel Number: 666-032-018.

Timeframe: The DEIR indicates that Project construction will occur in one phase. The construction activities include site preparation, grading, building construction, paving, and architectural coating. Construction is anticipated to begin in January 2025 and will last through April 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 DEIR 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 DEIR are explained in greater detail below and summarized here. CDFW is concerned that the DEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the DEIR lacks sufficient information to facilitate a meaningful review by CDFW, including a complete and accurate assessment of biological resources on the Project site. CDFW requests that additional information and analyses be added to a revised DEIR, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

Existing Environmental Setting

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

The DEIR lacks a complete assessment of biological resources within the Project site and surrounding area specifically as it relates to special-status plants and natural communities. A complete and accurate assessment of the environmental setting and Project-related impacts to special status plants and natural communities is needed to both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures reduce Project impacts to less than significant.

Mitigation Measures

CEQA requires that a DEIR include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the DEIR 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 special-status plants, assessment of wildlife, artificial nighttime lighting, CDFW's Lake and Streambed Alteration Program, and salvage of sand-dependent Covered Species, as well as revising the mitigation measures for nesting birds and burrowing owl.

1) Assessment of Biological Resources

Page 12 of the Project's Biological Resources Assessment, dated December 20, 2022 (Biological Assessment), lists several rare annual plant species including, but not limited to, ribbed cryptantha (*Johnstonella costata*; California Rare Plant Rank (CRPR 4:3)), flat-seeded spurge (*Chamaesyce platysperma*; CRPR 1B.2), white-bracted spineflower (*Chorizanthe xanti* var. *leucotheca*; CRPR 1B.2), and slender cottonheads (*Nemacaulis denudate gracilis*; CRPR 2B.2), which "could conceivably occur on the project site." According to page 10 of the Project's Biological Assessment, "Field surveys for plant and animal species were initiated on November 18, 2022. Daytime field surveys were conducted on November 18, 19, 20, 27, 28, 30 December 2, 3, 4, 2022. Night surveys were conducted on November 18, 21, and 22, 2022." Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a Project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed.

Because surveys for special-status plant species were conducted outside of the typical bloom period for the rare plant species listed above, it is uncertain if any individuals or significant populations of these species exist within the large 38-acre Project site. Surveys implemented using recommended protocols and conducted during the appropriate time(s) of the year is an important step in adequately disclosing potential impacts to special-status native plants and sensitive natural communities. CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant

Populations and Sensitive Natural Communities² provides the following guidance on timing and number of visits: “Conduct botanical field surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting. Space botanical field survey visits throughout the growing season to accurately determine what plants exist in the Project area. This usually involves multiple visits to the Project area (e.g., in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special status plants are present.³ The timing and number of visits necessary to determine if special status plants are present is determined by geographic location, the natural communities present, and the weather patterns of the year(s) in which botanical field surveys are conducted.” The findings of appropriate botanical field surveys for special-status native plants and sensitive natural communities are important in informing appropriate avoidance, minimization, and mitigation measures and supporting the City in demonstrating that Project impacts are reduced to less than significant. CDFW recommends that the City include in a revised DEIR the results of a recent and 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 Sensitive Natural Communities (CDFW 2018 or most recent version). Based on findings from a recent floristic-based assessment, CDFW recommends that the DEIR is revised to include an analysis of direct, indirect, and cumulative impacts to biological resources and identification of appropriate avoidance, minimization, and mitigation measures.

CDFW also recommends that City add the following mitigation measure in **bold** to a revised DEIR:

Mitigation Measure BIO-[A]: Special-Status Plants

Prior to Project construction activities, a thorough, recent, 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 Sensitive Natural Communities (see <https://wildlife.ca.gov/Conservation/Plants>) shall be performed by a qualified biologist. Should any state-listed plant species (excluding CVMSHCP Covered

² Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, California Department of Fish and Wildlife, March 20, 2018. Link: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

³ U.S. Fish and Wildlife Service Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants available at: <https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/>

Species) be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should any species of native plants designated as rare, threatened, or endangered by state law (excluding CVMSHCP Covered Species) be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.

CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. CDFW is also concerned that the field assessments conducted in November and December 2022 were not conducted at the appropriate time of year to detect all special-status wildlife species. In addition, species-specific protocol-level surveys were not performed for the detection of special-status species. CDFW is concerned about the potential for special-status species to occur on or near the Project site, including, but not limited to, desert tortoise (*Gopherus agassizii*; State Endangered; Federally Threatened; CVMSHCP Covered Species), desert kit fox (*Vulpes macrotis*; protected as a fur-bearing mammal under Title 14 of California Code of Regulations (Chap. 5, §460)), American badger (*Taxidea taxus*; Species of Special Concern), and Palm Springs pocket mouse (*Perognathus longimembris bangsi*; Species of Special Concern; CVMSHCP Covered Species). Special-status species may also move into the Project site between the time of field surveys and start of Project construction activities. CDFW recommends that the DEIR is revised to include the findings of recent focused protocol-level surveys for special-status species that may occupy the Project site. CDFW recommends that the City add the following mitigation measure to a revised DEIR:

Mitigation Measure BIO-[B]: Assessment of Wildlife

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

sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) in Attachment 1 for revised MM BIO-1 and MM BIO-2, as well as CDFW-recommended MM BIO-[A], MM BIO-[B], MM BIO-[C], MM BIO-[D], and MM BIO-[E].

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.).

Permittees of the CVMSHCP must ensure that Covered Activities within their jurisdictions—both inside and outside Conservation Areas—do not take, possess, or needlessly destroy the nest or eggs of nesting birds. Per Section 3.5.6 of the California Department of Fish and Wildlife (CDFW) Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 for the CVMSHCP, "take outside of Conservation Areas will be consistent with sections 3503 and 3503.5 of the Fish and Game Code." Per Section 13.2 of the CVMSHCP Implementing Agreement, County and Cities' obligations include, but are not limited to, taking "all necessary and appropriate actions, following applicable land use permit enforcement procedures and practices, to enforce the terms of project approvals for public and private projects, including compliance with the MSHCP, the Permits and this Agreement."

Page 5-5 of the DEIR indicates that "nesting birds and burrowing owls have the potential to occur given the site conditions and vegetation found on the site." The DEIR includes Mitigation Measure BIO-1 for nesting birds, which indicates that "for any grading or other site disturbance or tree or vegetation removal occurring during the nesting season between February 1st and August 31st, a qualified biologist shall conduct at least one nesting bird survey". CDFW considers the Mitigation Measure BIO-1 to be insufficient in scope and timing to reduce impacts to nesting birds to a level less than significant. CDFW is concerned about impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and

construction. Conducting work outside the peak nesting season is an important avoidance and minimization measure. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017⁴). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. 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 therefore 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.

Although the DEIR includes Mitigation Measure BIO-2 for nesting birds, CDFW considers the measure insufficient to scope and timing to reduce impacts to a level 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: 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. Construction activities may not occur inside the established buffers, which 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

⁴ Socolar JB, Epanchin PN, Beissinger SR and Tingley MW (2017). Phenological shifts conserve thermal niches. Proceedings of the National Academy of Sciences 114(49): 12976-12981.

fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

~~For any grading or other site disturbance or tree or vegetation removal occurring during the nesting season between February 1st and August 31st, a qualified biologist shall conduct at least one nesting bird survey, and more if deemed necessary by the consulting biologist, 24 hours prior to initiation of project-related ground-disturbing activities. If nesting birds are present, no work shall be permitted near the nest until the young birds have fledged. While there is no established protocol for nest avoidance, when consulted, the CDFW generally recommends avoidance buffers of about 500 feet for birds-of-prey, and 100 — 300 feet for songbirds.~~

3) *Burrowing Owl*

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

Permittees of the CVMSHCP must ensure that Covered Activities within their jurisdictions—both inside and outside Conservation Areas—do not result in the take of the burrowing owl individuals, nests, or eggs. Per Section 3.5.6 of the California Department of Fish and Wildlife (CDFW) Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 for the CVMSHCP, “take outside of Conservation Areas will be consistent with sections 3503 and 3503.5 of the Fish and Game Code.” Adding further clarification, Section 3.5.6 of CDFW’s NCCP Permit indicates that “following all laws applicable to migratory birds (discussed below), the pairs or individuals will not be Taken, just the land around and including the burrows”, and “the HCP/NCCP does not authorize Take of nests and eggs as prohibited by Fish and Game Code sections 3503 and 3503.5 and therefore avoidance measures will have to be undertaken for all projects which have breeding burrowing owls present.” An activity that results in the take of burrowing owl individuals, nests, or eggs would be unlawful and would not be a Covered Activity under the CVMSHCP. Per Section 13.2 of the CVMSHCP Implementing Agreement, County and Cities’ obligations include, but are not limited to, taking “all necessary and appropriate actions, following applicable land use permit enforcement procedures and practices, to enforce the terms of project approvals for public and private projects, including compliance with the MSHCP, the Permits and this Agreement.” The City has an obligation under the CVMSHCP to ensure the Project does not result in the take of burrowing owl individuals, nests, and eggs.

Page 4.3-12 of the DEIR states that “a burrowing owl was observed five times during the field surveys and one active burrow with one owl was found within the site boundaries. The entire site is considered suitable burrowing owl habitat with friable soil and rodent burrows that could be expanded in size by the owls.” The Project site contains suitable habitat for burrowing owl and burrowing owls have been identified onsite.

Although the DEIR includes Mitigation Measure BIO-1 for burrowing owl, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends that the City revise Mitigation Measure BIO-1 with the following additions in **bold** and removals in ~~strike through~~:

Mitigation Measure BIO-1: Burrowing Owl Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and 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 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.

~~Per the 2012, California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation, a burrowing owl clearance survey shall be performed by a qualified biologist 14 to 30 days prior to any site disturbance (grubbing, grading, and construction). The pre-construction survey is required to use accepted protocol (CDFW Staff Report). A final clearance survey must be conducted 24 hours prior to ground disturbance. If owls are found to be present during the breeding season (February 15 through September 15), a qualified biologist will prepare a plan and submit it to CDFW for review and approval prior to establishing a buffer area (a no-disturbance zone) around the active burrow. When it is determined that all young owls have permanently left the burrow (fledged), the buffer area may be abandoned, and the adult owls captured and relocated, if approved under the plan. If the presence of any burrowing owl is confirmed in preconstruction surveys, regardless of season, a qualified biologist shall prepare a plan for avoidance or relocation and submit it to the CDFW for review and approval. No construction activity shall be permitted until the measures contained in the approved plan have been completed.~~

4) Artificial Nighttime Lighting

The proposed Project will result in new sources of artificial nighttime lighting, including lighting for safety and security (page 4.1-27 of the DEIR). The Project is located adjacent to open-space areas to the north and west of the Project site—areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife. The Project's proposed artificial nighttime lighting has the potential to significantly and adversely affect wildlife in the open-space areas adjacent to the Project site. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation.⁵ Many species use photoperiod cues for communication (e.g., bird song⁶), determining when to begin foraging,⁷ behavioral

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.

thermoregulation,⁸ and migration.⁹ Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.¹⁴

Page 4.1-27 of the DEIR indicates, “For security purposes, the project will provide nighttime lighting to safely illuminate the parking areas, entrances, signs, and walkways. According to the photometric plan, project light fixtures will consist of downward-oriented post-mounted and wall-mounted fixtures located throughout the project. The wall-mounted fixtures will provide lighting for building entryways, sidewalks, and general exterior lighting. The post-mounted fixtures are proposed to be located in the parking lot areas and along the paved driveways. The downward-oriented fixtures are designed to not only provide light on the project site, but also to reduce the amount of light emitted towards adjacent properties.” While these plans for shielding artificial lighting support the Project in limiting lighting impacts to biological resources within areas surrounding the Project site, CDFW considers these measures insufficient in scope and timing to reduce impacts to a level less than significant. To support the City in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends the City add the following mitigation measure to a revised DEIR:

Mitigation Measure BIO-[C]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the City of Palm Springs and Project proponent 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 Palm Springs and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The City of Palm Springs and Project proponent 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) Lake and Streambed Alteration Program

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.

Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following: divert or obstruct the natural flow of any river, stream, or lake; change the bed, channel, or bank of any river, stream, or lake; use material from any river, stream, or lake; or deposit or dispose of material 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.

Page 4.3-3 of the DEIR indicates that "no blue-line stream corridors (streams or dry washes) occur in the project area." Based on review of historical aerial imagery using Google Earth Pro, ephemeral streams traverse the western half of the proposed Project area. Evidence of erosion and scour, slopes and depressions, and stream-aligned vegetation are visible and evident in historical imagery particularly on the western half of the Project site. To ensure that impacts to streams and associated fish and wildlife are reduced to a level less than significant, CDFW recommends that the City add the following mitigation measure to a revised DEIR:

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

Prior to construction, 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 shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

6) *Coachella Valley Multiple Species Habitat Conservation Plan*

Salvage of Sand-Dependent Covered Species

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." Page 17 of the Project's Biological Assessment indicates that "one mammalian species that was detected (burrows) and contained within the California Department of Fish & Game Special Animals List is the Palm Springs ground squirrel (*Spermophilus tereticaudus chlorus*)." To be consistent with the CVMSHCP, CDFW recommends that the City include in a revised DEIR the following mitigation measure:

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

Prior to vegetation removal or ground-disturbing activities, the City of Palm Springs will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species within the Project site.

7) Landscaping

Page 3-7 of the DEIR indicates that the “project landscape will include drought-tolerant trees (24-inch boxes), 12-foot palms, and ground covers (15-gallon) typically found in the region, such as willow acacia, desert museum palo verde, thornless honey mesquite, and date palm. Shrubs and accent plantings proposed for the project include outback sunrise emu bush, new gold lantana, Lindheimer’s muhly, firecracker plant, various agave, cactus, yucca, and aloe. Fractured rock, and decomposed granite will provide ground cover. Exterior irrigation will use drip or micro-spray applicators.” 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/cities and resource conservation cities 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 DEIR 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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the DEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the DEIR lacks sufficient information for a meaningful review of impacts to biological resources, including a thorough floristic-based assessment of special-status plants and natural communities. The CEQA Guidelines indicate that recirculation is required when insufficient information in the DEIR precludes a meaningful review (§ 15088.5). CDFW recommends that a revised DEIR, including a complete assessment of biological resources (floristic-based assessment of special-status plants and natural communities) be recirculated for public comment. CDFW also recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised DEIR.

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, Senior Environmental Scientist Specialist, 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-[A]: Special-Status Plants</p> <p>Prior to Project construction activities, a thorough, recent, 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 Sensitive Natural Communities (see https://wildlife.ca.gov/Conservation/Plants) shall be performed by a qualified biologist. Should any species of native plants designated as rare, threatened, or endangered by state law (excluding CVMSHCP Covered Species) be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.</p>	<p>Timing: Prior to Project construction activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>
<p>Mitigation Measure BIO-[B]: Assessment of Wildlife</p> <p>Prior to Project construction activities, a complete and recent inventory of threatened,</p>	<p>Timing: Prior to Project construction activities.</p>	<p>Implementation: City of Palm Springs and Project proponent</p>

<p>endangered, and other sensitive wildlife species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.</p>	<p>Methods: See Mitigation Measure</p>	<p>Monitoring and Reporting: City of Palm Springs</p>
<p>Mitigation Measure BIO-2: 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</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 Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>

<p>be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>Mitigation Measure BIO-1: Burrowing Owl Surveys</p> <p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report on Burrowing Owl Mitigation</i> prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and 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 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</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 ground disturbance.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>

<p>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 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-[C]: Artificial Nighttime Lighting</p> <p>Throughout construction and the lifetime operations of the Project, the City of Palm Springs and Project proponent 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 Palm Springs and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International</p>	<p>Timing: Throughout construction and the lifetime operations of the Project.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>

<p>Dark-Sky Association standards at http://darksky.org/). The City of Palm Springs and Project proponent 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>Mitigation Measure BIO-[D]: CDFW Lake and Streambed Alteration Program</p> <p>Prior to construction, 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 shall 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</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>
<p>Mitigation Measure BIO-[E]: Salvage of Sand-Dependent Covered Species</p> <p>Prior to vegetation removal or ground-disturbing activities, the City of Palm Springs will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species within the Project site.</p>	<p>Timing: Prior to vegetation removal of ground-disturbing activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>