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DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 30, 2023
Sent via email

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

Palm Drive – Claire Avenue Mixed Use Complex (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2023090654

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: CM2 Ventures, LLC

Objective: The Project proposes the development of a mixed-use complex on approximately 9.10 acres of vacant desert land in the City of Desert Hot Springs. The mixed-use complex will include three retail pads for commercial buildings and fast-food restaurants, an air-conditioned self-storage building, self-storage units, and parking units. In addition to the proposed buildings, the Project also proposes internal paved drive aisles, landscaping throughout, security perimeter fencing, and parking spaces. Construction activities will occur in phases including site preparation, grading, building construction, paving, and architectural coating. The Project landscape will include large drought-tolerant flowering trees and shrubs typically found in the region, such as bougainvillea California, barrel cactus, agave, yellow bells, and brittlebush. Exterior irrigation will use drip or micro-spray applicators to avoid overwatering and promote water efficiency. The site frontage, facing Palm Drive, will consist of palm trees along with low lying plants and fencing. The proposed Project would create new long-term sources of light and glare from interior and exterior building lighting, safety and security lighting, landscape lighting, and vehicles accessing the site. The Project will shield light fixtures to minimize spillage onto adjacent properties.

Location: The proposed Project is located on the southwest corner of the intersection of Palm Drive and Claire Avenue in the City of Desert Hot Springs, California. Assessor's Parcel Number: 657-050-003. The western edge of the property is located within the Coachella Valley Multiple Species Habitat Conservation Plan Area, outside a Conservation Area, and approximately 0.25-miles east of the Upper Mission Creek/Big Morongo Canyon Conservation Area.

Timeframe: The MND indicates that construction activities for the Project are anticipated to begin at the end of summer 2023 and be completed by the end of summer 2024.

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 desert tortoise, desert kit fox, the CDFW Lake and Streambed Alteration Program, and artificial nighttime lighting, as well as revising the mitigation, monitoring, and reporting measures for nesting birds and burrowing owl.

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.).

The entire Project site contains cover of shrubs that provide suitable habitat for nesting birds. Page 36 of the MND indicates "the dominant plant community is creosote bush scrub, dominated by creosote bush (*Larrea tridentata*) and burrobush (*Ambrosia dumosa*) (Holland 1986). Emory's indigo bush (*Psoralea emoryi*), peachthorn (*Lycium cooperi*) and cheesebush (*Ambrosia salsola*) occur in lesser numbers throughout the site."

The MND includes Mitigation Measure BIO-3 for nesting birds, which indicates that "nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist will conduct pre construction Nesting Bird Surveys (NBS) prior to project-related disturbance to nestable vegetation to identify any active nests." 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 compliance with all applicable laws pertaining to nesting and migratory birds. 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., 2017²). CDFW staff have observed that climate

² 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.

change conditions may result in the 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 considers the Mitigation Measure BIO-3 to be insufficient in scope and timing to reduce impacts to nesting birds to less than significant. CDFW recommends the City revise Mitigation Measure BIO-3 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-3: Nesting Birds

Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

~~Nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist will conduct pre construction Nesting Bird Surveys (NBS) prior to project related disturbance to nestable vegetation to identify any active nests. If no active nests are found, no further action will be required. If an active nest is found, the biologist will set appropriate no-work buffers around the nest which will be based upon the nesting species, its sensitivity to disturbance, nesting stage, and expected types, intensity, and duration of the disturbance. The nests and buffer zones shall be field checked weekly by a qualified biological monitor. The approved no-work buffer zone shall be clearly marked in the field, within which no disturbance activity shall commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.~~

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-1 and MM-BIO-3, as well as CDFW-recommended MM BIO-[A] through MM BIO-[D].

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 37 of the MND indicates that “burrowing owl have the potential to occur on-site.” Page 17 of the Project’s General Biological Assessment indicates that “no sign of active burrowing owl use was observed (burrows, feathers, whitewash, etc.), but suitable nesting habitat exists.” CDFW notes that Desert Hot Springs has a particularly high concentration of burrowing owls compared to other areas in Coachella Valley. Data in the California Natural Diversity Database (CNDDB) indicates two recent burrowing owl observations (both observed in 2021) within a one-mile radius of the Project. Although the MND includes Mitigation BIO-1 for burrowing owls, CDFW considers the measure inadequate in scope and timing to reduce impacts to burrowing owl to a level less than significant.

To support the City in reducing impacts to burrowing owl to less than significant, CDFW recommends that the City revise Mitigation Measure BIO-1 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-1: Burrowing Owl Avoidance

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 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 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. A Pre-construction Burrowing Owl Survey shall be conducted by a qualified biologist at least 14 days prior to any Project activities, at any time of year. Surveys shall be completed following the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation (CDFG, March 2012) or most recent version by a qualified biologist. If an active burrowing owl burrow is detected within any Project disturbance area, or within a 500-foot buffer of the disturbance area, a 300-foot radius buffer zone surrounding the burrow shall be flagged, and no impacts to soils or vegetation or noise levels above 65 dBA shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August). At the request of the City of Desert Hot Springs, we also recommend a 24-hour take avoidance survey be conducted for consistency with the 2012 protocols. If burrowing owls are found nesting on site, the following measures shall be implemented:

- Occupied burrows will not be disturbed unless a qualified biologist approved by the CDFW verifies through non-invasive methods that either (a) the adult birds have not begun egg-laying and incubation; or (b) the juveniles from the occupied burrows are foraging independently and are capable of independent survival.**
- If the biologist is not able to verify one of the above conditions, then no disturbance shall occur within 500 meters of a burrowing owl nest during the breeding season to avoid abandonment of the young (California Department of Fish and Wildlife 2012).**

~~If burrowing owls are observed during the preconstruction survey, CDFW will be contacted to discuss protective measures.~~

3) Desert Tortoise and CVMSHCP Compliance

Page 37 of the MND indicates that “there is some habitat within the Project site and adjacent area that is suitable for burrowing owl and desert tortoise [(*Gopherus agassizii*)]”. The Project is located within modeled habitat for desert tortoise, a Covered Species under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP). CVMSHCP Section 9.6.1.4 states that “both inside and outside Conservation Areas, avoidance, minimization, and mitigation measures require relocation of individual tortoises if required surveys locate individuals on the site of Covered Activities.” The MND includes Mitigation Measure BIO-2, which indicates that “the Permittee shall either: 1) notify the Service 45 days prior to the issuance of a grading permit to allow for the potential salvage of adult tortoises within this notification time period; or 2) condition such projects to conduct desert tortoise clearance surveys per the Service’s protocol.” CDFW considers Mitigation Measure BIO-2 to be inadequate in scope and timing to reduce impacts to less than significant. To support the City and Project proponent in reducing impacts to less than significant and complying with the CVMSHCP, CDFW recommends that Mitigation Measure BIO-[A] be added to the MND:

MM BIO-[A]: Desert Tortoise Surveys

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%20Pre-project%20Survey%20Protocol%202019.pdf>), during the species’ most active periods (April through May or September through October). CDFW recommends working with CDFW and USFWS 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 2019 desert tortoise survey methodology (*Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise*;

<https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise%20Pre-project%20Survey%20Protocol%202019.pdf>). Pre-construction surveys shall be completed using perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign within the Project area and 50-foot buffer zone. Pre-activity 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.

4) Desert Kit Fox

Desert kit fox (*Vulpes macrotis arsipus*) is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, § 460) and may not be taken at any time. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found onsite during breeding season, it could delay Project activities for the length of the breeding season. According to data layers in Biogeographic Information and Observation System (BIOS), predicted habitat for desert kit fox overlaps the Project area. However, the MND does not appear to analyze the potential for impacts to this species from Project activities. CDFW recommends that focused surveys for desert kit fox are conducted and findings are included in a revised MND.

To ensure impacts to desert kit fox are reduced to a level less than significant, CDFW recommends that the City incorporate into a revised MND the following mitigation measure:

MM BIO-[B]: Desert Kit Fox Surveys

No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental

care.

5) **CDFW's Lake and Streambed Alteration Program**

Page 36 of the MND indicates "the eastern border along Palm Drive experiences occasional runoff from the road as well as concentrated flow during rainfall events. The plant species here include species found in areas with higher soil moisture such as purslane (*Portulaca oleraceae*) and fanleaf crinklemap (*Tiquila plicata*)." Page 39 of the MND indicates that "the site lacks evidence of hydrological flow such as debris lines, soil deposits, defined erosion, evidence of and restricted or confined flow. There is no riparian vegetation typical of desert washes, drainages or other confined channels such as can be found along some alluvial fans. The soils do not show typical color changes representative of deposition of exotic (not found in the local area) soil material. In the professional judgment of NRAI, the Project site does not support jurisdictional waters for any of the three jurisdictional agencies." Based on review of historical aerial imagery Google Street View photos, there is evidence of stream habitat onsite including erosion and scour along both the western side (Cactus Drive) and eastern side (Palm Drive) of the Project site.

Fish and wildlife resources subject to Fish and Game Code section 1600 et seq., include the bed, channel, and bank of any river, stream, or lake. Please note that "any river, stream, or lake" includes those that are dry for periods of time as well as those that flow year-round. 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.

Based on review of aerial imagery, it appears the Project has the potential to change the bed, channel, or bank of a stream; therefore, CDFW recommends that City submit a notification of streambed alteration. More information on the notification process for the Lake and Streambed Alteration Program is available here:
<https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

To support the City and Project proponent in complying with Fish and Game Code 1600 et seq., CDFW recommends that the City add the following mitigation measure to a revised MND:

MM BIO-[C]: CDFW Lake and Streambed Alteration Program

Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game

Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

6) Artificial Nighttime Lighting

Page 18 of the MND indicates that “proposed Project would create new long-term sources of light and glare from interior and exterior building lighting, safety and security lighting, landscape lighting, and vehicles accessing the site. Lighting and glare levels will be regulated by the City’s lighting standards (Municipal Code Section 17.40.170), including shielding and filtration during Project design and operation, and are not expected to exceed typical levels emitted by nearby industrial facilities. The Project will shield light fixtures to minimize spillage onto adjacent properties. Adherence to Zoning Code design standards will assure that Project light and glare impacts will be less than significant.” However, the MND does not include design 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 often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation³. Many species use photoperiod cues for communication (e.g., bird song⁴), determining when to begin foraging⁵, behavioral thermoregulation⁶, and migration⁷. Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it⁸.

The Project is located 0.25 miles from the Upper Mission Creek/Big Morongo Canyon Conservation Area, which is an important biological corridor for CVMSHCP Covered

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.

Species. Per CVMSHCP Section 3.2.7 (Upper Mission Creek/Big Morongo Canyon Conservation Area), “the area east of Morongo Wash, typically along the sandy eastern bank, provides Habitat connectivity for the Palm Springs pocket [(*Perognathus longimembris bangsi*)] mouse between the Upper Mission Creek/Big Morongo Canyon Conservation Area and the Willow Hole Conservation Area. For the Morongo Wash area to function as a Biological Corridor between two Core Habitat areas for the Palm Springs pocket mouse, continuous Habitat must exist along the corridor so that, over time, genetic material will be transmitted between the two Core Habitat populations through the resident population in the Habitat connectivity area.” Artificial nighttime lighting created by the Project has the potential to negatively impact Palm Springs pocket mouse, burrowing owls, and other CVMSHCP Covered Species and biological resources that occupy the Upper Mission Creek/Big Morongo Canyon Conservation Area and other areas surrounding the Project site.

The MND includes Mitigation Measure AES-1, indicating that Project lighting will be consistent with CVMSHCP Section 4.5.3 requiring that “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.” However, CDFW considers this measure insufficient in timing and scope. To support the City in reducing impacts to Palm Springs pocket mouse, burrowing owl, and other Covered Species and biological resources to a level less than significant, CDFW recommends that the revised MND also include the following mitigation measure:

MM BIO-[D]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the City 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 shall ensure that all lighting for the Project is fully shielded, cast downward, 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 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.

7) Landscaping

Pate 12 of the MND indicates that “the Project landscape will include large drought-tolerant flowering trees and shrubs typically found in the region, such as *Bougainvillea*

California, Barrel Cactus, Agave, Yellow Bells and Brittlebush. Exterior irrigation will use drip or micro-spray applicators to avoid overwatering and promote water efficiency.” 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.)

CONCLUSION

Patricial Villagomez, Principal Planner
City of Desert Hot Springs
October 30, 2023
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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 and analysis 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.

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-3: Nesting Birds</p> <p>Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>	<p>Timing: No more than 3 days prior to vegetation removal or ground-disturbing activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project Proponent and City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>
<p>Mitigation Measure BIO-1: Burrowing Owl Avoidance</p> <p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG 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 for review and approval prior to commencing Project activities. The</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: Project Proponent and City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>

<p>Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing 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>MM BIO-[A]: Desert Tortoise Surveys</p> <p>Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in <i>Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise</i> (USFWS 2019; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf), during the species' most active periods (April through May or September through October). CDFW recommends</p>	<p>Timing: Focused Surveys: Prior to vegetation removal or ground-disturbing 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</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>

<p>working with CDFW and USFWS 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 2019 desert tortoise survey methodology (<i>Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise</i>; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise%20Pre-project%20Survey%20Protocol%202019.pdf). Pre-construction surveys shall be completed using perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign within the Project area and 50-foot buffer zone. Pre-activity 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>MM BIO-[B]: Desert Kit Fox Surveys</p> <p>No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-</p>	<p>Timing: No more than 14 calendar days prior to start of Project activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>

<p>construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.</p>		
<p>MM BIO-[C]: CDFW Lake and Streambed Alteration Program</p> <p>Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Timing: Prior to construction and issuance of any grading permit.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project proponent and City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>
<p>MM BIO-[D]: Artificial Nighttime Lighting</p> <p>Throughout construction and the lifetime operations of the Project, the City 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 shall ensure that all lighting for the Project is fully shielded, cast downward, 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 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>Timing: Throughout construction and the lifetime operations of the Project.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project proponent and City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>