



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

October 23, 2023  
*Sent via email*

**October 24 2023**

## STATE CLEARINGHOUSE

Kendra Reif  
Principal Planner  
City of Indio  
100 Civic Center Mall  
Indio, CA 92201

The Greens Indio Project (PROJECT)  
Mitigated Negative Declaration (MND)  
SCH# 2023100096

Dear Kendra Reif:

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

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.

---

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

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 2

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:** Can Do LLC

**Objective:** The Project proposes the construction of a multi-tenant commercial retail center that would include surface parking, landscaping, and on-site and off-site utility infrastructure, and would reconstruct the existing Indio Municipal Golf Courses parking lot east of the driveway along the project site frontage on Avenue 42. Construction activities would include site clearing, site preparation, grading, infrastructure installation (storm drain, water, wastewater, dry utilities, and street improvements), building construction, paving, architectural coating, and landscaping. Existing landscape vegetation would be removed except for the palm trees in the existing Indio Municipal Golf Course parking lot. No street trees in the public rights-of-way would be removed. The proposed Project would include 1.8 acres of landscaping around the project site perimeter, building frontages, and parking areas. Landscaping would incorporate typical desert climate plants. The plant palette would include succulents and cacti, including fox tail agave, blue elf aloe, bear grass, and spineless prickly pear cactus. The proposed Project would have approximately 193 new trees along the project site perimeter and within the boundaries of the site. Perimeter trees would include Guadalupe palm, palmetto palm tree, California palm, date palm, and Indian rosewood along the southern project site boundary. Internal to the project site, landscaping would include Mexican blue palm, dwarf fan palm, shoestring acacia, thornless Texas honey mesquite, palo blanco, and desert museum palo verde. The proposed Project would generate lighting from two primary sources: lighting from the building interiors that would pass through windows, and lighting from exterior sources (e.g., outdoor patio, signage, street lighting, parking area lighting, building illumination, security lighting, and wayfinding lighting).

**Location:** The proposed Project is located at the northeast corner of Jackson Street at Avenue 42 intersection in the City of Indio, Riverside County, California. The approximately 6.12-acre project site includes Assessor's Parcel Numbers (APNs) 692-670-001, -014, and -017 and 692-040-020 and -007.

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 3

**Timeframe:** The MND indicates construction would take approximately 8 months, starting in January 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

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 4

are reduced to less than significant, CDFW recommends adding mitigation measures for burrowing owl avoidance, avoidance of bats during tree removal, and artificial nighttime lighting, as well as revising the mitigation measures for nesting birds and bat surveys.

### **1) Nesting Birds**

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

Page 35 of the MND indicates that the offsite infrastructure improvement area to the east of the Project site supports vegetation that could support nesting birds, including "bush seepweed scrub (*Suaeda nigra*), disturbed allscale scrub (*Atriplex polycarpa*), and honey mesquite thickets (*Prosopis glandulosa*). There is approximately 0.06 acre of bush seepweed/allscale and mesquite thickets in the off-site area where trenching would occur associated with utility improvements." Also, on-site Mexican fan palms (*Washingtonia robusta*) provide suitable habitat for nesting birds and roosting habitat for western yellow bats (see Bat section below). For example, hooded oriole (*Icterus cucullatus*) primarily nest in palm trees and build hanging nests on the undersides of palm fronds<sup>2</sup>. The MND includes Mitigation Measure BIO-3 for nesting migratory birds, which indicates that "during construction, grubbing, brushing, or tree removal shall be conducted outside of the State-identified nesting season for migratory birds (i.e., typically February 1 through August 31), if possible. If construction activities cannot be conducted outside of nesting season, a Pre-construction Nesting Bird Survey within and adjacent to the Project shall be conducted by a qualified biologist within three days prior to initiating construction activities." Conducting work outside the peak nesting season is an important avoidance and minimization measure; however, CDFW also recommends

---

<sup>2</sup> Garrett, K., and J. Dunn. 1981. Birds of southern California. Los Angeles Audubon Soc., Los Angeles.

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 5

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., 2017<sup>3</sup>). CDFW staff have observed that climate 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 additions in **bold** and removals in ~~strikethrough~~:

### **Mitigation Measure BIO-3: Nesting Birds**

During construction, grubbing, brushing, or tree removal shall be conducted outside of the ~~State-identified~~ **peak** nesting season for migratory birds (i.e., typically February 1 through August 31), if possible. **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.** ~~During construction, grubbing, brushing, or tree removal shall be conducted outside of the State-identified nesting season for migratory~~

---

<sup>3</sup> 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.

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 6

~~birds (i.e., typically February 1 through August 31), if possible. If construction activities cannot be conducted outside of nesting season, a Pre-construction Nesting Bird Survey within and adjacent to the Project shall be conducted by a qualified biologist within three days prior to initiating construction activities. If active nests are found during the Pre-construction Nesting Bird Survey, a sNesting Bird Plan (NBP) shall be prepared by a qualified biologist and implemented during construction. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, monitoring, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, nesting sage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity.~~

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-2 and 3, as well as CDFW-recommended MM-BIO [A], MM-BIO [B], and MM-BIO [C].

## **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 5 of the Project’s Biological and Aquatic Resources Constraints Assessment for The Greens Indio Project (Biological Assessment) indicates that the burrowing owl “is know from the region; however, suitable habitat and burrows necessary to support this species were not documented on the site or in surrounding areas. Additionally, the species nor their sign was observed during the field surveys. As such, burrowing owl is considered to have a low potential for occurrence.” CDFW notes in California, preferred habitat is generally typified by short, sparse vegetation with few shrubs<sup>4</sup>, and that burrowing owls may occur in ruderal grassy fields, vacant lots, and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in

---

<sup>4</sup> Haug, E. A., B. A. Millsap, and M. S. Martell. 1993. Burrowing owl (*Speotyto cunicularia*), in A. Poole and F. Gill, editors, The Birds of North America, The Academy of Natural Sciences, Philadelphia, Pennsylvania, and The American Ornithologists’ Union, Washington, D.C., USA

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 7

proximity.<sup>5</sup> Historical aerial imagery shows that although the Project site is regularly disced or graded, vegetation in some areas quickly re-establishes following disturbance. Burrowing owls frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman et al. 2008<sup>6</sup>; Coulombe 1971<sup>7</sup>). Unprocessed data from California Natural Diversity Database (CNDDDB)/Biogeographic Information and Observation System (BIOS) indicates multiple occurrences of burrowing owl in the Whitewater River less than a mile from the Project site. CDFW is concerned about the potential for burrowing owls to move into the Project site between the time that the field assessments were last conducted (January 6, 2023, for the Project site and August 18, 2023, for the off-site improvement area as indicated in the Biological Assessment) and the start of Project construction activities. CDFW recommends the City add the following mitigation measure to a revised MND.

#### **Mitigation Measure BIO-[A]: 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)*. 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**

---

<sup>5</sup> Gervais, J. A., D. K. Rosenberg, R. G. Anthony. 2003. Space use and pesticide exposure risk of male burrowing owls in an agricultural landscape. *Journal of Wildlife Management* 67: 155-164

<sup>6</sup> Chipman, E. D., N. E. McIntyre, R. E. Strauss, M. C. Wallace, J. D. Ray, and C. W. Boal. 2008. Effects of human land use on western burrowing owl foraging and activity budgets. *Journal of Raptor Research* 42(2): 87-98.

<sup>7</sup> Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. *Condor* 73:162-176.

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 8

**cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.**

**Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.**

### **3) Bats**

Page 35 and 36 of the MND indicate that western yellow bat (*Lasiurus xanthinus*) “has a moderate potential for occurrence on the project site. On-site Mexican fan palms are suitable for roosting, and western yellow bats often forage in open, grassy areas with water features, such as those found at the adjacent golf course. Therefore, the proposed Project has the potential to result in impacts on the western yellow bat is if Mexican fan palms are removed or trimmed as a part of construction. If tree removal or trimming is necessary, MM BIO-2 requires pre-construction surveys for special-status bat species to be conducted by a qualified biologists prior to construction.”

In California, western yellow bats appear to roost exclusively in the skirt of dead fronds of both native and non-native palm trees and appear to be limited in their distribution by availability of palm habitat.<sup>8</sup> Western yellow bats likely form small maternity groups in palm trees.<sup>9</sup> Some individuals or populations may be migratory, although some individuals appear to be present year-round, even in the northernmost portion of the range including southern California. Western yellow bats are strongly associated with

---

<sup>8</sup> Bolster, B.C., Bolster, B.C., (ed.). 1998. Terrestrial Mammal Species of Special Concern in California. Draft Final Report. May. Sacramento, CA. Prepared by Paul W. Collins. Prepared for California Department of Fish and Game, Nongame Bird and Mammal Conservation Program, Sacramento, CA.

<sup>9</sup> Life History Account for Western Yellow Bat, California Department of Fish and Wildlife, February 2008.



Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 9

native California fan palm (*Washingtonia fillifera*)<sup>10</sup> and Mexican fan palm (*Washingtonia robusta*)<sup>7</sup> in Coachella Valley. While the MND includes Mitigation Measure BIO-2, CDFW considers the measure to be insufficient in timing and scope to reduce impacts to special-status bat species to less than significant. CDFW recommends that the Mitigation Measure BIO-2 is revised with the following additions in **bold** and removals in ~~strikethrough~~:

### **Mitigation Measure BIO-2: Bat Surveys**

**Prior to the initiation of Project activities within suitable bat roosting habitat, the City of Indio shall retain a qualified biologist to conduct focused surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. Two spring surveys (April through June) and two winter surveys (November through January) shall be performed by qualified biologists. Surveys shall be conducted during favorable weather conditions only. Each survey shall consist of one dusk emergence survey (start one hour before sunset and last for three hours), followed by one pre-dawn re-entry survey (start one hour before sunrise and last for two hours), and one daytime visual inspection of all potential roosting habitat on the Project site. Surveys shall be conducted within one 24-hour period. Visual inspections shall focus on the identification of bat sign (i.e., individuals, guano, urine staining, corpses, feeding remains, scratch marks and bats squeaking and chattering). Bat detectors, bat call analysis, and visual observation shall be used during all dusk emergence and pre-dawn re-entry surveys. If active hibernacula or maternity roosts are identified in the work area or 500 feet extending from the work area during preconstruction surveys, for maternity roosts, Project construction will only occur outside of the maternity roosting season. Maternity roosts shall not be evicted, excluded, removed, or disturbed. A minimum 500-foot no-work buffer shall be provided around wintering roosts (hibernacula). The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers shall be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise. ~~Construction activities including removal or trimming of palm trees shall be avoided to limit potential impacts to roosting/foraging habitat for special-status bat species. If construction work including palm tree removal or trimming is required, then pre-construction surveys for special-status bat species shall be conducted by a qualified biologist no less than 7 days and~~**

---

<sup>10</sup> Stokes, D., M. Combs, and K.B. Clark. 2023. Surveys for Western Yellow Bat in the Coachella Valley. 2022. Annual Report. February 8, 2023

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 10

~~no more than 14 days prior to any palm tree removal or construction activities. Surveys shall be done during appropriate times of the day (e.g., dawn or dusk) to maximize detectability to determine if special-status bat species are roosting near the work area. Survey methodology may include visual surveys of bats (e.g., observation of bats during foraging period), inspection of suitable habitat, bat sign (e.g., guano), or use of ultrasonic detectors (e.g., Anabat, etc.). The type of survey will depend on the condition of the potential roosting habitat. If no bats are found, then no further study is required. If bat species are found to be roosting within 100 feet of the project impact area, a 100-foot buffer zone will be established around the active roost. Construction activities shall not occur within the 100-foot buffer zone. Construction-related lighting shall not occur within the 100-foot buffer zone. Combustion equipment, such as generators, pumps, and vehicles are not to be parked nor operated within the 100-foot buffer zone. Construction personnel shall not enter the 100-foot buffer zone. If the active roost is in a tree identified for removal, the tree removal shall be delayed until a qualified biologist determined the roost to no longer be active.~~

Also, because the Project may result in the removal of palm trees, that may support roosting habitat and maternity groups for western yellow bats, the Project should implement appropriate avoidance, minimization, and mitigation measures to ensure impacts to this species are less than significant. Removal of palm trees that contain roosting habitat for bats can subject bats to impacts ranging from permanent loss of day roosts, including maternity roosts, to direct mortality if avoidance, minimization, and mitigation measures are not implemented. To support the City of Indio in reducing impacts to western yellow bat to less than significant, CDFW also recommends that the following mitigation measure is added to a revised MND:

#### **Mitigation Measure BIO-[B]: Avoidance of Bats during Tree Removal**

**Tree removal work with the potential to house roosting bats shall be performed between September 15 and October 31 to minimize direct impacts to roosting bats. This time period is after young are volant (flying) but before expected onset of torpor (wintering inactivity). Tree removal work may also be conducted between February 15 and March 31, following winter torpor and prior to the start of the maternity season. No tree removals shall occur during the hibernation season, which typically begins in November or December (depending on weather conditions) and continues through mid-February, due to the high potential for mortality of hibernating bats. Depending on weather conditions and the best professional judgement of a qualified bat biologist approved by CDFW, tree removal work may be performed in November if the forecasted nighttime low temperatures on the evening of removal and the subsequent four evenings do not drop below 45°F. In November, if weather is cold (i.e., forecasted nighttime low temperatures reach 45°F or less for that evening and the next four evenings), then no tree removals shall be performed. All tree removals shall require a two-step**

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 11

**removal process and the involvement of a CDFW-approved qualified bat biologist to ensure that no roosting bats are killed during this activity. The following two-step tree removal process shall be implemented over two consecutive days: on Day 1, live palm fronds located above the frond skirt, and as identified by a qualified bat biologist, will be removed. On Day 2, the remainder of the tree may be removed without supervision by a qualified bat biologist.**

#### ***4) Artificial Nighttime Lighting***

Page 23 of the MND indicates that “proposed Project would generate lighting from two primary sources: lighting from the building interiors that would pass through windows, and lighting from exterior sources (e.g., outdoor patio, signage, street lighting, parking area lighting, building illumination, security lighting, and wayfinding lighting).” Also indicated on page 23 of the MND, “the project site is within an urban environment with commercial uses which contain existing light sources such as street lighting, traffic lighting, and other sources including nighttime illumination of the neighboring Indio Municipal Golf Course in the evenings”, and “the Project would also be required to comply with General Plan Policy CE-7.8 and Policy LU-3.5 which would ensure that new light sources associated with the Project are shielded and directed away from open viewing space areas and do not adversely affect day or nighttime views.” The MND lacks any additional details on the Project’s lighting plans and lighting specifications or additional avoidance and minimization measures associated with artificial nighttime lighting.

Because the Project is located adjacent to open-space areas including a golf course—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—CDFW recommends the MND is revised to include an analysis of the direct, indirect, and cumulative impacts of artificial nighttime lighting expected to adversely affect biological resources within open-space areas adjacent to the Project site. Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; and the detection of resources and natural enemies; and navigation.<sup>11</sup> Many species use photoperiod cues for communication

---

<sup>11</sup> 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.

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 12

(e.g., bird song<sup>12</sup>), determining when to begin foraging,<sup>13</sup> behavioral thermoregulation,<sup>14</sup> and migration. Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.<sup>15</sup>

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

### **Mitigation Measure BIO-[C]: 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.**

### **5) Landscaping**

Page 10 of the MND indicates that landscaping will be installed “around the project site perimeter, building frontages, and parking areas. Landscaping would incorporate typical desert climate plants with decorative boulders. The plant palette would include succulents and cacti, including fox tail agave, blue elf aloe, bear grass, and spineless prickly pear cactus. The proposed Project would have approximately 193 new trees along the project site perimeter and within the boundaries of the site. Perimeter trees would include Guadalupe palm, palmetto palm tree, California palm, date palm, and Indian rosewood along the southern project site boundary. Internal to the project site, landscaping would include Mexican blue palm, dwarf fan palm, shoestring acacia, thornless Texas honey mesquite, palo blanco, and desert museum palo verde.” To

---

<sup>12</sup> Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

<sup>13</sup> Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

<sup>14</sup> Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

<sup>15</sup> Longcore, T., and C. Rich. 2004. Ecological light pollution -Review. *Frontiers in Ecology and the Environment* 2:191–198.

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 13

ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants. More information on native plants suitable for the Project location and nearby nurseries is available at Calscape: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>. CDFW also recommends that the MND include recommendations regarding landscaping from Section 4.0 of the CVMSHCP "Table 4-112: Coachella Valley Native Plants Recommended for Landscaping" (pp. 4-180 to 4-182; <https://cvmshcp.org/plan-documents/>).

## **ENVIRONMENTAL DATA**

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

## **ENVIRONMENTAL DOCUMENT FILING FEES**

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

## **CONCLUSIONS**

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially

Kendra Reif, Principal Planner  
City of Indio  
October 23, 2023  
Page 14

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](mailto:jacob.skaggs@wildlife.ca.gov).

Sincerely,

DocuSigned by:



84F92FFEEFD24C8...

Kim Freeburn  
Environmental Program Manager

**Attachment 1:** MMRP for CDFW-Proposed Mitigation Measures

ec:

Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW  
[Heather.Brashear@Wildlife.ca.gov](mailto:Heather.Brashear@Wildlife.ca.gov)

Office of Planning and Research, State Clearinghouse, Sacramento  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

Kendra Reif, Principal Planner  
 City of Indio  
 October 23, 2023  
 Page 15

## ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
<p><b>Mitigation Measure BIO-3: Nesting Birds</b></p> <p>During construction, grubbing, brushing, or tree removal shall be conducted outside of the peak nesting season for migratory birds (i.e., typically February 1 through August 31). 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><b>Timing:</b> No more than 3 days prior to vegetation removal or ground-disturbing activities.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> Project Proponent and City of Indio</p> <p><b>Monitoring and Reporting:</b> City of Indio</p>
<p><b>Mitigation Measure BIO-[A]: Burrowing Owl Avoidance</b></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). If burrowing owls are detected during the focused surveys, the qualified biologist and Project</p>	<p><b>Timing: Focused surveys:</b> Prior to vegetation removal or ground-disturbing activities. <b>Pre-construction surveys:</b> No less than 14 days prior to start of Project-</p>	<p><b>Implementation:</b> Project Proponent and City of Indio</p> <p><b>Monitoring and Reporting:</b> City of Indio</p>

Kendra Reif, Principal Planner  
 City of Indio  
 October 23, 2023  
 Page 16

<p>proponent shall prepare a <b>Burrowing Owl Plan</b> that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing 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>related activities and within 24 hours prior to ground disturbance.</p> <p><b>Methods:</b> See Mitigation Measure</p>	
<p><b>Mitigation Measure BIO-2: Bat Surveys</b></p> <p>Prior to the initiation of Project activities within suitable bat roosting habitat, the City of Indio shall retain a qualified biologist to conduct focused surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. Two spring surveys (April through June) and two winter surveys (November through January) shall be</p>	<p><b>Timing:</b> Prior to initiation of Project activities</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> Project Proponent and City of Indio</p> <p><b>Monitoring and Reporting:</b> City of Indio</p>



Kendra Reif, Principal Planner  
 City of Indio  
 October 23, 2023  
 Page 17

<p>performed by qualified biologists. Surveys shall be conducted during favorable weather conditions only. Each survey shall consist of one dusk emergence survey (start one hour before sunset and last for three hours), followed by one pre-dawn re-entry survey (start one hour before sunrise and last for two hours), and one daytime visual inspection of all potential roosting habitat on the Project site. Surveys shall be conducted within one 24-hour period. Visual inspections shall focus on the identification of bat sign (i.e., individuals, guano, urine staining, corpses, feeding remains, scratch marks and bats squeaking and chattering). Bat detectors, bat call analysis, and visual observation shall be used during all dusk emergence and pre-dawn re-entry surveys. If active hibernacula or maternity roosts are identified in the work area or 500 feet extending from the work area during preconstruction surveys, for maternity roosts, Project construction will only occur outside of the maternity roosting season. Maternity roosts shall not be evicted, excluded, removed, or disturbed. A minimum 500-foot no-work buffer shall be provided around wintering roosts (hibernacula). The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers shall be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise.</p>		
<p><b>Mitigation Measure BIO-[B]: Avoidance of Bats during Tree Removal</b></p> <p>Tree removal work with the potential to house roosting bats shall be performed between September 15 and October 31 to minimize direct impacts to roosting bats. This time period is after young are volant (flying) but before expected onset of torpor (wintering inactivity). Tree removal work may also be conducted between February 15 and March 31, following winter torpor and prior to the start of the maternity season. No tree removals shall occur during the hibernation season, which typically begins in November or December (depending on weather conditions) and continues through mid-February, due to the high potential for mortality of hibernating bats. Depending on weather conditions and the best professional judgement of a qualified bat biologist</p>	<p><b>Timing:</b> Between September 15 and October 31, and between February 15 and March 31.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> Project Proponent and City of Indio</p> <p><b>Monitoring and Reporting:</b> City of Indio</p>

Kendra Reif, Principal Planner  
 City of Indio  
 October 23, 2023  
 Page 18

<p>approved by CDFW, tree removal work may be performed in November if the forecasted nighttime low temperatures on the evening of removal and the subsequent four evenings do not drop below 45°F. In November, if weather is cold (i.e., forecasted nighttime low temperatures reach 45°F or less for that evening and the next four evenings), then no tree removals shall be performed. All tree removals shall require a two-step removal process and the involvement of a CDFW-approved qualified bat biologist to ensure that no roosting bats are killed during this activity. The following two-step tree removal process shall be implemented over two consecutive days: on Day 1, live palm fronds located above the frond skirt, and as identified by a qualified bat biologist, will be removed. On Day 2, the remainder of the tree may be removed without supervision by a qualified bat biologist.</p>		
<p><b>Mitigation Measure BIO-[C]: Artificial Nighttime Lighting</b></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 <a href="http://darksky.org/">http://darksky.org/</a>). 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><b>Timing:</b>                  Throughout construction and the lifetime operations of the Project</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b>                  Project Proponent and City of Indio</p> <p><b>Monitoring and Reporting:</b> City of Indio</p>