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December 14, 2023
Sent via email

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



PS Containers Development (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2023110540

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: PS Containers Development

Objective: The Project proposes the development of a 2.18-acre property. The proposed development would occur on the southern portion of the site (0.92 acres) and would result in an outdoor storage yard for containerized/pod storage. The Project will include block wall screening the site from Dillon Road in the south, and a chain link fence with Ficus trees screening it from Cabot Road to the west, as well as from the north and east. Potential sources of light may include security lighting in the storage area, as well as lighting in the parking area and along pedestrian walkways. Any on-site outdoor lighting will be required to comply with the City's outdoor lighting standards, including requirements for shielding and filtering as applicable. The proposed development would result in an approximately 0.92-acre area of disturbance, an estimated 4,380 square foot paved area, installation of a 100-square foot prefabricated restroom (storage container), retention basin, and a trash enclosure. The construction period would include site preparation, grading, building construction, paving, and architectural coating phases. Ficus trees are proposed to provide screening along the eastern, western, and northern boundaries of the 0.92-acre development area. The Project also proposes half-width widening and improvements to Dillon Road.

Location: The proposed Project is located in the City of Desert Hot Springs, Riverside, County, California, on the northeastern corner of the intersection of Dillon Road and the unimproved Cabot Road, within Assessor's Parcel Number 665-120-032. The Project site is located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) area, 100 feet north of the Willow Hole Conservation Area and approximately 2,000 feet west of the Upper Mission Creek/Big Morongo Canyon Conservation Area.

Timeframe: The MND indicates that construction of the proposed Project would occur over a three-month period beginning 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 assessment of biological resources on the Project site and an incomplete 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 an adequate 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 biological resources, CDFW requires a complete and accurate Project description.

Existing Environmental Setting

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

The MND lacks a complete assessment of biological resources within the Project site and surrounding area. A complete and accurate assessment of the environmental setting and Project-related impacts to biological resources is needed to both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures reduce Project impacts to less than significant.

Mitigation Measures

CEQA requires that an 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 assessment of biological resources, desert kit fox, artificial nighttime lighting, CVMSHCP compliance, and salvage of sand-dependent Covered Species, as well as revising the mitigation measure for nesting birds, burrowing owls, and desert tortoise.

1) Assessment of Biological Resources

Pages 22 and 23 of the Project's Habitat Suitability Assessment & CVMSHCP Consistency Report (Biological Assessment) indicate that several rare plant species, including Harwood's eriastrum (*Eriastrum harwoodii*; California Rare Plant Rank (CRPR) 1B.2), Arizona spurge (*Euphorbia arizonica*; CRPR 2B.3), spiny-hair blazing star (*Mentzella tricuspis*; CRPR 1B.2), and slender cottonheads (*Nemacaulis denudata* var. *gracilis*; CRPR 2B.2) are identified as having suitable or potentially suitable habitat within the Project site and a low potential to occur on the Project site. Page 29 of the MND states that "[n]one of these plants were detected on-site during the field assessment, however, the assessment was conducted outside of these species' blooming period." The single field assessment was conducted on August 9, 2023 (page 5 of the Biological Assessment) and outside of the typical bloom period for the four rare plant species listed above. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed. The Project's potential impacts on plants that meet the definition of rare, threatened, or endangered, per Section 15380 of the CEQA Guidelines, must be analyzed in the MND.

To adequately investigate the Project's potentially significant environmental impacts to rare plant species for which the Project site contains suitable habitat, CDFW recommends that the MND is revised to include the findings of a thorough, recent, floristic-based assessment of special status plants and natural communities, conducted at the appropriate time of year when the rare plant species, identified as having suitable or potentially suitable habitat within the Project site, are identifiable. Based on findings

from a recent floristic-based assessment of special status plants and natural communities, CDFW recommends that the MND is revised to include an analysis of direct, indirect, and cumulative impacts to biological resources and identification of appropriate avoidance, minimization, and mitigation measures. Recent and complete information on biological resources; analysis of a Project's direct, indirect, and cumulative impacts; and appropriate avoidance, minimization, and mitigation measures support the City in demonstrating that Project impacts to biological resources are less than significant.

CDFW recommends that the City of Desert Hot Springs include in a revised MND the following mitigation measure:

Mitigation Measure BIO-[A]: Assessment of Biological Resources

Prior to Project construction activities, a thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see <https://www.wildlife.ca.gov/Conservation/Plants>) shall be performed by a qualified biologist. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should other special-status plants or natural communities be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-1, MM BIO-2, MM BIO-3, as well as CDFW-recommended MM BIO-[A], MM BIO-[B], MM BIO-[C], MM BIO-[D], and MM BIO-[E].

2) Nesting Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it

unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

The MND includes Mitigation Measure BIO-3 for nesting birds, which indicates that “[i]f Project construction will require on-site disturbance during the nesting seasons (approximately January 15 to August 31), then nesting bird surveys must be conducted by a qualified ornithologist or biologist immediately prior to on-site disturbance. If nesting birds are found, then no work is permitted near the nest until the young have fledged. Consistent with CDFW recommendations, an avoidance buffer of about 500 feet for listed species and birds-of-prey, and a buffer of 100 to 300 feet for unlisted songbirds, shall be applied.” Conducting work outside the peak breeding 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 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

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.

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. If Project construction will require on-site disturbance during the nesting seasons (approximately January 15 to August 31), then nesting bird surveys must be conducted by a qualified ornithologist or biologist immediately prior to on-site disturbance. If nesting birds are found, then no work is permitted near the nest until the young have fledged. Consistent with CDFW recommendations, an avoidance buffer of about 500 feet for listed species and birds-of-prey, and a buffer of 100 to 300 feet for unlisted songbirds, shall be applied.

3) *Burrowing Owl*

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

Page 30 of the MND indicates that “[t]he burrowing owl, designated as a Bird of Conservation Concern by the USFWS and a Species of Special Concern by the CDFW, is the only special status bird species with the potential to nest on the Project site. The field assessment did not detect any burrowing owls on-site.” CDFW notes that data in the California Natural Diversity Database, accessed via the Biogeographic Information and Observation System (BIOS), includes a burrowing owl observation approximately 0.4 miles northwest of the Project site. Further, the City of Desert Hot Springs has one of the highest concentrations of burrowing owls for areas located outside conservation areas in Coachella Valley. Page 5 of the Project’s Biological Assessment states that, as a component of the field assessment on August 9, 2023, “[a]djacent undeveloped areas within an approximate 150- meter (~500-foot) buffer zone were also assessed visually, from the project site, for burrowing owl.” The MND lacks additional details on the methods used to survey for burrowing owl—that is, if a burrowing owl habitat assessment and/or focused surveys were conducted following guidelines outlined in the

Staff Report on Burrowing Owl Mitigation (CDFW 2012³). Since it is uncertain if a burrowing owl habitat assessment and/or focused surveys were conducted, and because suitable habitat for burrowing owl exists within the Project site, CDFW recommends the MND is revised to include summary reports from recent focused surveys for burrowing owls as described in the *Staff Report on Burrowing Owl Mitigation*. Focused surveys for burrowing owl provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, 3503.5, and 3513. If focused surveys confirm occupied burrowing owl habitat in or adjacent to the Project area, CDFW recommends that the MND is revised to include an impact assessment per guidelines in the *Staff Report on Burrowing Owl Mitigation*. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of the proposed Project. Focused surveys, and an impact assessment will also inform appropriate avoidance, minimization, and mitigation measures for the Project and help demonstrate that impacts to burrowing owls are less than significant.

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

Mitigation Measure BIO-2: Burrowing Owl Avoidance

Because suitable burrowing owl habitat has been identified within the Project site, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall 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

³ California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency.

relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities. ~~Two pre-construction take avoidance surveys for burrowing owl must be conducted: within 14-30 days prior to ground disturbance, and one within 24 hours of ground disturbance, in conformance with the CDFW Staff Report for burrowing owl, which provides specific performance standards for these surveys. If a burrowing owl is found to occur on the Project site, then CDFW shall be contacted as soon as possible to determine the appropriate course of action required if owl(s) continue to occupy the site at the time of Project implementation.~~

4) Desert Tortoise (*Gopherus agassizii*)

Page 9 of the Project's Biological Assessments indicates that the Project "site does appear to be within modeled habitats for four special status fauna species addressed by the CVMSHCP. These include [...] desert tortoise." Page 24 of the Project's Biological Assessment states that "there is a very low potential for the desert tortoise [...] to occur on the project site" and "no desert tortoise sign (i.e., burrows, scat, tracks, carcasses, etc.) were detected on-site during the assessment." The CVMSHCP Section 9.6.1.4 indicates that "[b]oth 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-1: "If a desert tortoise is found on the subject site, it must be relocated by a qualified biologist and in accordance with CDFW and USFWS protocols and CVMSHCP guidelines." Given that the Project is located within CVMSHCP modeled habitat for desert tortoise and adjacent to the Willow Hole Conservation Area, which contains Other Conservation Habitat for desert tortoise, CDFW recommends that

focused surveys are conducted prior to commencing Project activities. CDFW considers Mitigation Measure BIO-1 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, CDFW recommends that Mitigation Measure BIO-1 is revised with the following additions in **bold** and removals in ~~strike through~~:

Mitigation Measure BIO-1: Desert Tortoise Surveys

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. ~~If a desert tortoise is found on the subject site, it must be relocated by a qualified biologist and in accordance with CDFW and USFWS protocols and CVMSHCP guidelines.~~

5) 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. Page 8 of the Project's Biological Assessment indicates that "desert kit fox (*Vulpes macrotis*) [...] were not detected, however, there is potential for them to forage on or move through the site." It is unclear if the single field assessment on August 9, 2023, included focused surveys, conducted independently from surveys for other species, for desert kit fox. According to data layers in Biogeographic Information and Observation System (BIOS), predicted habitat for desert kit fox overlaps the Project area. Given the potential for desert kit fox to occur onsite, 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.

6) *Artificial Nighttime Lighting*

Page 20 of the MND states that the Project's "[p]otential sources of light may include security lighting in the storage area, as well as lighting in the parking area and along pedestrian walkways. Any on-site outdoor lighting will be required to comply with the City's outdoor lighting standards, as provided in §17.40.170 of the Municipal Code, including requirements for shielding and filtering as applicable." 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.

The Project is located adjacent to open-space areas on all sides, including the CVMSHCP's Willow Hole Conservation Area directly to the south of the Project across Dillon Road—areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, bats, other nocturnal and crepuscular wildlife, and CVMSHCP Covered Species. The Willow Hole Conservation Area provides Core Habitat for Covered Species including Coachella Valley fringe-toed lizard (*Uma inornata*), Coachella Valley round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), and Palm Springs pocket mouse (*Perognathus longimembris bangsi*). 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; the detection of resources and natural enemies; and navigation⁴. Many species use photoperiod cues for communication (e.g., bird song⁵), determining when to begin foraging⁶, behavioral thermoregulation⁷, and migration⁸. Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it⁸.

To support the City in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant and complying with Land Use Adjacency Guidelines associated with lightning under the CVMSHCP, 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.

7) Coachella Valley Multiple Species Habitat Conservation Plan

Widening of Dillon Road

Page 9 of the MND indicates that “[t]he Project will include half-width improvements to Dillon Road, to bring the roadway to the General Plan standard along the subject site’s

⁴ 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.

⁵ Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

⁶ Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

⁷ Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

⁸ Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.

frontage. The half-width improvements will provide for the north half of a 100' right of way, four lanes of divided traffic, a buffered bike lane, and a 10' shoulder. The relocation of two existing fire hydrants and the existing telecommunications cable route will be required to accommodate the proposed widening of Dillon Road. The Project also proposes a 30' easement for the future development of Cabot Road along the site's western boundary and a 5' public utility easement along the eastern frontage." Based on this description, the Project is proposing the widening of Dillon Road to four lanes. It also appears the Project may be part of a larger roadway project to widen adjacent sections of Dillon Road to four lanes.

Section 4.3.8 of the CVMSHCP (Willow Hole Conservation Area) includes Required Measures 1 indicating that "[a]t such time as those portions of Little Morongo Road, Mountain View Road, Dillon Road, 18th Avenue, and Varner Road within the Conservation Area are widened to four or more lanes, the appropriate Local Permittee for the project will ensure that culverts or undercrossings of adequate size and design to maintain ecosystem function for Covered Species are constructed under the road. Widening projects will undergo the Joint Project Review Process set forth in Section 6.6.1.1 to determine the dimensions of the culverts or undercrossings based on site specific conditions and best available science." The MND lacks a discussion on how this component of the Project, to widen Dillon Road, is consistent with the CVMSHCP. CDFW recommends the MND is revised to include additional details on this component of the Project (widening of Dillon Road and installation of utilities infrastructure) in the Project description and a discussion of this Project component as it relates to compliance with the CVMSHCP. CDFW recommends that the City contact the Coachella Valley Conservation Commission (Implementing Entity for the CVMSHCP) to discuss the proposed widening of Dillon Road as it relates to the Project's consistency with the CVMSHCP, which may include participating in the CVMSHCP Joint Project Review Process.

Local Development Mitigation Fee

Section 5.2.1.1 of the CVMSHCP indicates that "[l]ocal jurisdictions will impose a mitigation fee on new Development within the Plan Area that impacts vacant land containing Habitat for the Covered Species or any of the conserved natural communities in the Plan through adoption, or amendment of an existing fee ordinance. In addition to large vacant areas, this also applies to small vacant lots within urban areas that still contain natural open space." The Project site contains modeled habitat for CVMSHCP Covered Species including, but not limited to, Palm Springs pocket mouse and Coachella Valley round-tailed ground squirrel; therefore, the Project is required to pay a Local Development Mitigation Fee per CVMSHCP section 5.2.1.1.

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

Mitigation Measure BIO-[D]: CVMSHCP Compliance

Prior to construction and issuance of any grading permit, the City of Desert Hot Springs shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee and transfer of revenues to the Coachella Valley Conservation Commission.

Salvage of Sand-Dependent Covered Species

Page 9 of the Project's Biological Assessments indicates that the Project "site does appear to be within modeled habitats for four special status fauna species addressed by the CVMSHCP. These include Coachella Valley round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), desert tortoise (*Gopherus agassizii*), LeConte's thrasher (*Toxostoma lecontei*), and Palm Springs pocket mouse (*Perognathus longimembris bangsi*)." Page 10 of the Project's Biological Assessment indicates that Coachella Valley milk vetch (*Astragalus lentiginosus* var. *coachellae*) has a moderate to high potential to occur on the Project site. Within the CVMSHCP Plan Area and outside of a Conservation Area, Local Permittees have obligations concerning the protection of Covered Species. Per CVMSHCP Section 6.6.1 (Obligations of Local Permittees), within and outside conservation areas, Local Permittees must "ensure compliance for public and private projects with all applicable Requirement Measures in Section 4.4," and "on parcels approved for Development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species in accordance with the Implementation Manual." With regard to the City's obligation to encourage the opportunity to salvage sand-dependent Covered Species, CDFW recommends the City include in a revised MND a mitigation measure on the preparation of a plan for salvaging sand-dependent Covered Species. CDFW recommends the following mitigation measure be added to a revised MND:

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

Prior to construction and issuance of any grading permit, the City of Desert Hot Springs shall prepare and submit to the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, for review and approval, a plan to salvage sand-dependent CVMSHCP Covered Species within the Project area. The plan shall be prepared by a qualified biologist experienced in surveying for and handling sand-dependent Covered Species. The plan shall include, but not be limited to, the species-specific salvage methods and timing for each sand-dependent Covered Species identified within the Project site and the location(s) where each species will be translocated. Only qualified biologist(s) with appropriate state and federal permits to handle special-status species shall carry out salvage activities.

Land Use Adjacency Guidelines

Regarding CVMSHCP Land Use Adjacency Guidelines, page 31 of the MND “[t]he site is not within the boundaries of a CVMSHCP conservation area, but is located in close proximity to two conservation areas. The Willow Hole Conservation Area is approximately 100 feet south of the subject site, and the Upper Mission Creek/Big Morongo Canyon Conservation Area is located approximately 1,969 feet east of the site. The Project property does not share a common boundary with any parcel in a conservation area, and is thus not subject to the CVMSHCP Land Use Adjacency Guidelines.” In relation to the Project, the Willow Hole Conservation Area boundary is located on the south side of Dillon Road. Based on the Project Description, Project activities include activities to widen a section of Dillon Road on the south side of the Project area, which would be adjacent to the Willow Hole Conservation Area. The Project description indicates that “[t]he Project will include half-width improvements to Dillon Road, to bring the roadway to the General Plan standard along the subject site’s frontage. The half-width improvements will provide for the north half of a 100’ right of way, four lanes of divided traffic, a buffered bike lane, and a 10’ shoulder. The relocation of two existing fire hydrants and the existing telecommunications cable route will be required to accommodate the proposed widening of Dillon Road.” Based on this Project description, it is unclear if Project activities will be located directly adjacent to the Willow Hole Conservation Area. If activities are only proposed on the northern half of Dillon road, Project activities would be within 50 feet of Willow Hole Conservation Area. CDFW recommends the Project description is revised to clearly indicate the locations of Project activities associated with the widening of Dillon Road. CDFW notes that the Project and is located in very close proximity to the Willow Hole Conservation Area and the Project has potential to result in indirect, negative impacts on the wildlife, including CVMSHCP Covered Species, using the Willow Hole Conservation Area. For example, the Project’s artificial nighttime lighting may negatively impact wildlife using the Willow Hole Conservation Area as discussed in the Artificial Nighttime Lighting section above. Given the Project’s close proximity to the Willow Hole Conservation Area, CDFW recommends that avoidance and minimization measures, such as those discussed in the Artificial Nighttime Lighting section above, are incorporated into a revised MND.

8) Landscaping

Page 20 of the MND indicates that “[c]hain link fencing and Ficus trees are proposed to provide screening along the eastern, western, and northern boundaries of the 0.92-acre development area.” No other details are provided in the MND on the Project’s proposed landscaping plans. 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

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 assessment of biological resources and 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

Patricia Villagomez, Principal Planner
City of Desert Hot Springs
December 14, 2023
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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-[A]: Assessment of Biological Resources</p> <p>Prior to Project construction activities, a thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see https://www.wildlife.ca.gov/Conservation/Plants) shall be performed by a qualified biologist. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should other special-status plants or natural communities be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.</p>	<p>Timing: Prior to Project construction activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project Proponent and City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>
<p>Mitigation Measure BIO-3: Nesting Birds</p> <p>Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers</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>shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>Mitigation Measure BIO-2: Burrowing Owl Avoidance</p> <p>Because suitable burrowing owl habitat has been identified within the Project site, focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report on Burrowing Owl Mitigation</i> prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be</p>	<p>Timing: Focused surveys: Prior to vegetation removal or ground-disturbing activities. Pre-construction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project Proponent and City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>

<p>performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>		
<p>Mitigation Measure BIO-1: Desert Tortoise Surveys</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_Pre-project%20Survey%20Protocol_2019.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>Timing: No More than 14 calendar days prior to start of Project activities and after any pause in Project activities lasting 30 days or more.</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-[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</p>	<p>Timing: No more than 14 days prior to the beginning of ground disturbance and/or Project activities.</p>	<p>Implementation: Project proponent and City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>

<p>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.</p>	<p>Methods: See Mitigation Measure</p>	
<p>Mitigation Measure BIO-[C]: 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>
<p>Mitigation Measure BIO-[D]: CVMSHCP Compliance</p> <p>Prior to construction and issuance of any grading permit, the City of Desert Hot Springs shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee and transfer of revenues to the Coachella Valley Conservation Commission.</p>	<p>Timing: Prior to construction and issuance of any grading permit.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Desert Hot Springs</p> <p>Monitoring and Reporting: City of Desert Hot Springs</p>

<p>Mitigation Measure BIO-[E]: Salvage of Sand-Dependent Covered Species</p> <p>Prior to construction and issuance of any grading permit, the City of Desert Hot Springs shall prepare and submit to the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, for review and approval, a plan to salvage sand-dependent CVMSHCP Covered Species within the Project area. The plan shall be prepared by a qualified biologist experienced in surveying for and handling sand-dependent Covered Species. The plan shall include, but not be limited to, the species-specific salvage methods and timing for each sand-dependent Covered Species identified within the Project site and the location(s) where each species will be translocated. Only qualified biologist(s) with appropriate state and federal permits to handle special-status species shall carry out salvage activities.</p>	<p>Timing: Prior to construction and issuance of any grading permit.</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>
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