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GAVIN NEWSOM, Governor
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February 10, 2025
Sent via email

Glenn Mlaker
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City of Palm Springs
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First Palm Springs Commerce Center (PROJECT)
Draft Environmental Impact Report (DEIR)
SCH# 2024010068

Dear Glenn Mlaker:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of Palm Springs (City) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related

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

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: First Industrial Realty Trust Inc.

Objective: The Project proposes the construction of two warehouse buildings with office spaces, truck docking areas, and employee parking spaces. Building 1 will be 1,516,174 square feet (sf), with 258 truck trailer docks, four grade doors, 929 parking spaces for cars and trucks, and 25 bicycle parking areas. Building 2 will be 388,530 sf with 42 truck trailer docks, two grade doors, 302 parking spaces for cars and trucks, and 14 bicycle parking areas. Site access will be gated and provided from the new roadway for Noble Drive to the north and 19th Avenue to the south. The Project will include stormwater channels along the site's frontage along North Indian Canyon Drive and underground retention basins to collect and store on-site and off-site storm water. The Project's artificial nighttime lighting will include street lighting along the internal roadways and along the site frontages along 18th Avenue, 19th Avenue, and North Indian Canyon Drive, and lighting outside building facades, gates, walkways, and parking areas. All light sources in the site's parking areas, walkway, and on the exterior of proposed buildings will be shielded downward. The Project will add new landscaping to the site with a mix of climate-adapted shrubs and grasses and shade trees in the parking areas and along building and perimeter buffers.

Location: The Project site is located north of the I-10 and east of SR 62, in the northern portion of the City of Palm Springs, Riverside County, California. The site is composed of five parcels, including Accessor's Parcel Numbers (APNs) 666-320-010, -011, -012, -015, and -019, and is bounded by 18th Avenue to the north, North Indian Canyon Drive to the east, 19th Avenue to the south, and Karen Drive to the west of the site.

Timeframe: Construction of the Project is anticipated in 2025.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of

those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The DEIR has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are reduced to less than significant.

CDFW's comments and recommendations on the DEIR are explained in greater detail below and summarized here. CDFW is concerned that the DEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the DEIR lacks sufficient information to facilitate a meaningful review by CDFW, including a complete and accurate assessment of biological resources on the Project site. CDFW requests that additional information and analyses be added to a revised DEIR, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

Existing Environmental Setting

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

The DEIR lacks a complete assessment of biological resources associated with special-status plants and burrowing owls 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 a DEIR include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the DEIR are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support the City in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for special-status plants, artificial nighttime lighting, CDFW Lake and Streambed Alteration Program, and salvage of sand-dependent covered species, as well as revising the mitigation measures for nesting birds and burrowing owl.

1) Assessment of Biological Resources

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. Page 13 of the Project's Biological Assessment Report for the First Palm Springs Commerce Center Project (Biological Assessment Report), dated October 17, 2024, indicates that the surveys were conducted in November and early December when it is unlikely that ribbed cryptantha (*Johnstonella costata*; California Rare Plant Rank [CRPR] 4.3), flat-seeded spurge (*Euphorbia platysperma*; CRPR 1B.2), slender cottonheads (*Nemacaulis denudate gracilis*; CRPR 2B.2), and white-bracted spineflower (*Chorizanthe xanti* var. *leucotheca*; CRPR 1B.2) would be detected. As indicated in Calflora, all four of these species are associated within the creosote bush scrub, the dominant plant community within the Project site. Also, observation data in Calflora includes historic occurrences of all four of these species in northwestern Coachella Valley. CDFW considers the Project site to contain suitable habitat for all four of these species. Per CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018²), CDFW recommends that botanical field surveys are conducted at the times of year when plants will be both evident and identifiable. Since surveys were conducted outside of the peak bloom period for the four special-status plant species discussed above, CDFW is concerned that the assessment of the existing environmental setting with respect to special-status plants has not been adequately analyzed in the DEIR. 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 without a complete and accurate description of the existing environmental setting, the DEIR likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant.

CDFW is further concerned about the accuracy of information regarding special-status plant species in the Biological Resources Assessment. Regarding flat-seeded spurge, the Biological Assessment Report indicates that "there are no records of its presence on or adjacent to the project site"; however, Calflora includes a historical observation of this species within the Project site. Regarding slender cottonheads, the Biological Assessment Report indicates that the "species usually occurs on sandy benches adjoining washes, a habitat not found within, or immediately adjacent to, the project site. [...] It is a covered species under the CVMSHCP. No other actions are required." CDFW

² CDFW, 2018. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and*

has identified at least three ephemeral streams located within the Project site (see Lake and Streambed Alteration Program section below), which contain suitable habitat for this species. CDFW also clarifies that slender cottonheads is not a Covered Species under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP). Information on CVMSHCP Covered Species, and information on the obligations of CVMSHCP Permittees, can be found here: <https://cvmshcp.org/>. Further, regarding the presence of special-status plants, page 8 of the Biological Assessment Report states that “due to the historical disturbance and lack of observations during the surveys, the habitat within the Survey Area is considered unsuitable to support potentially occurring special status plants. None were observed and none are expected to occur.” CDFW is concerned about the accuracy of this conclusion. Although the central portion of the site has been subject to disturbance over the past five years from the removal of a row of wind turbines, much of the Project site is undisturbed based on review of historical aerial and street view imagery accessed using Google Earth. Because the habitat within the Project site is largely undisturbed, including at least two of the ephemeral streams located within the Project site, CDFW does not consider the recent disturbance to the site associated with the removal of wind turbines to preclude the presence of special-status plants. CDFW recommends the DEIR and its supporting documents be revised to include accurate information on the status and potential presence of special-status plant species within the Project site.

Without an appropriate assessment of the biological resources, particularly focused on special-status plants, appropriate avoidance, minimization, and/or mitigation measures cannot be identified, and it is uncertain if impacts to biological resources have been reduced to a level less than significant. CDFW recommends the DEIR and its supporting documents be revised to include the results of 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* (CDFW 2018³), which includes conducting botanical field surveys at the times of year when plants will be both evident and identifiable. Based on the findings of a thorough, recent floristic-based assessment, CDFW recommends that the DEIR be revised to include appropriate avoidance, minimization, and mitigation measures.

Given the DEIR’s lack of a complete assessment of biological resources associated with special-status plants, CDFW recommends the City add the following mitigation measure to a revised DEIR to support the City in reducing impacts to a level less than significant:

³ CDFW, 2018. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and*

Sensitive Natural Communities, State of California, California Natural Resources Agency, Department of Fish and Wildlife: March 20, 2018 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>)

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

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

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

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.).

With regard to the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), per its associated Implementing Agreement and Permits from CDFW and the U.S. Fish and Wildlife Service (USFWS), Take associated with Covered Activities will not be in violation of the Migratory Bird Treaty Act and will be consistent with Fish and Game Code sections 3503 and 3503.5; therefore, all Covered Activities within and outside Conservation Areas must undertake measures to avoid the take of individuals, nests, and eggs of nesting birds. Having conferred Take Authorization of Covered Species and/or their habitats to this Project, the City of Palm Springs is obligated to take

all necessary and appropriate actions, following applicable land use permit enforcement procedures and practices, to enforce the Project's compliance with the CVMSHCP, the state and federal permits associated with the CVMSHCP, and the CVMSHCP Implementing Agreement, which include avoiding the take of individuals, nests, and eggs of nesting birds including birds of prey.

Page 4.3.15 of the DEIR indicates that "site does have some Sonoran creosote shrub and provides suitable nesting habitat for the breeding, foraging and dispersing of nesting birds." CDFW concurs that the Project site contains suitable habitat for nesting birds and notes that the majority of the Project site contains sparse cover of native shrubs that are suitable for nesting birds. The DEIR includes a Mitigation Measure BIO-2 for nesting birds, indicating that "due to the presence of shrubs and the potential for avian nesting sites, in accordance with the Migratory Bird Treaty Act and all applicable section of the California Fish and Game Code, ground disturbance and vegetation clearance shall take place before typical avian nesting seasons of February 1 and August 31." Conducting work outside the peak nesting season is an important avoidance and minimization measure. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017⁴). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW is concerned that ground-disturbing and vegetation removal activities conducted outside of the peak nesting season have the potential to impact nesting birds. CDFW considers Mitigation Measure BIO-2 to be insufficient in scope and timing to reduce impacts to a level less than significant.

To support the City in reducing impacts to nesting birds to a level less than significant, CDFW recommends that the City revise Mitigation Measure BIO-2 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-2: Nesting Birds

To the greatest extent feasible, Project construction activities will avoid the peak nesting season (February 1 through September 15). Regardless of the time of

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

year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to all vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. In accordance with the Migratory Bird Treaty Act and all applicable section of the California Fish and Game Code, ground disturbance and vegetation clearance shall take place before typical avian nesting seasons of February 1 and August 31.

3) *Burrowing Owl*

On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under the California Endangered Species Act (Fish & G. Code, § 2050 et seq.). During the candidacy period, western burrowing owl will be afforded the same protection as threatened and endangered species under CESA. If Project activities could result in take, appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities.

Take of individual burrowing owls and their nests or eggs is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. 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.” 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.).

With regard to the CVMSHCP, the CDFW Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 does not provide Take Authorization for burrowing owl individuals, nests, or eggs. Section 3.5.6 of the NCCP Permit states burrowing owl “pairs or individuals will not be Taken” and reiterates that the “HCP/NCCP does not authorize Take of [burrowing owl] nests [or] eggs[.]” Therefore, throughout the CVMSHCP area—both within and without Conservation Areas—Permittees must ensure that activities occurring within their jurisdictions do not result in the take, possession, or destruction of burrowing owl individuals, nests, or eggs. Any activity occurring within the CVMSHCP area that results in the take of burrowing owl individuals, nests, or eggs would be unlawful and would not be a Covered Activity under the CVMSHCP.

Page 4.3.12 of the DEIR indicates “two (2) special-status, avian species potentially occurring within the project boundaries are the loggerhead shrike (*Lanius ludovicianus*) and burrowing owl (*Athene cunicularia*). [...] Although no burrowing owls were observed at the site during the field surveys, the site has the potential to attract and provide habitat for burrowing owls.” Page 17 of the Project’s Biological Resources Assessment states that “potentially suitable burrows were present on site due to small mammal activity (e.g. ground squirrel)”. Given the habitat type within and surrounding the Project site, including sparse cover with few shrubs, gentle topography, and presence of potentially suitable burrows, CDFW concurs that the Project site contains suitable habitat for burrowing owl. CDFW also notes that the Project’s site’s potential to support burrowing owl is evidenced by the documented, recent presence of burrowing owls occupying similar habitat located less than a mile to the southeast in areas that are currently subject to various levels of disturbance by development activities (e.g., Project Viento, Desert Gateway, etc.).

Regarding survey methods, page 9 of the Biological Assessment Report indicates that “a burrowing owl assessment and subsequent protocol burrowing owl surveys were completed according to the Burrowing Owl Survey Instructions for the Western Riverside County Multiple Species Habitat Conservation Plan Area (City of Palm Springs 2006).” The Biological Assessment Report appears to mistakenly conflate requirements of the Western Riverside County Multiple Species Habitat Conservation Plan (WRMSHCP) and the CVMSHCP; CDFW clarifies that the Project is located within the CVMSHCP, which has requirements that are separate and distinct from those associated with the WRMSHCP. Page 9 of the Biological Assessment Report indicates that three focused surveys for burrowing owl were conducted in April 2023, and “transects were spaced no more than 30 meters to ensure 100 percent coverage. Rodent burrows were thoroughly examined for presence of sign (i.e., pellets, white wash, feathers, or prey remains), and suitable perches were inspected for BUOW pellets.” The DEIR lacks additional information on the survey methods used and

findings from surveys for burrowing owl. For example, the DEIR and its supporting documents lack a complete description of survey methods, a map showing the locations of all burrows suitable for burrowing owl, the qualifications of surveyor(s), photos of the Project site, and signed field forms, among other survey report components as recommended in the CDFW 2012 *Staff Report on Burrowing Owl Mitigation*⁵ under the Survey Reports section of Appendix D (Breeding and Non-breeding Season Surveys and Reports). Given the DEIR's lack of clarity on survey methods and the lack of appropriate reporting, the number of suitable and occupied burrows within the Project site and surrounding areas is unknown. CDFW recommends that the DEIR be revised to include the findings of focused surveys for burrowing owl within the Project site following the guidelines in the *Staff Report on Burrowing Owl Mitigation*, including a complete description of survey methods and survey reports, along with appropriate avoidance, minimization, and mitigation measures for burrowing owl.

With regard to avoidance and minimization measures, the DEIR includes Mitigation Measure BIO-1 for burrowing owl, which indicates that a "pre-construction protocol survey for burrowing owls in accordance with the Coachella Valley Multiple Species Conservation Plan Area shall be conducted. This mitigation measure requires a clearance survey be conducted not more than 14 days prior to grubbing, grading, or other surface disturbances to determine whether the species still occurs on the site. A final clearance survey must be conducted 24 hours prior to ground disturbance. If the owl is present during the breeding season (February 15 through September 15), a qualified biologist will establish a buffer area (a no disturbance zone) around the active burrow. When it is determined that all young owls have permanently left the burrow (fledged), the buffer area may be abandoned, and the adult owls captured and relocated. All these activities must be governed by a plan approved by CDFW. If an owl is present, regardless of the presence of young, a qualified biologist must develop either an avoidance or a relocation plan for review and approval by the CDFW, approved under permit." CDFW appreciates the inclusion of requirements to coordinate with CDFW to determine appropriate methods of any planned burrowing owl relocations. However, CDFW is concerned that the measure lacks requirements for focused burrowing owl surveys, details on what to include within a burrowing owl plan if burrowing owls are detected, and appropriate avoidance, minimization, and mitigation measures. CDFW considers Mitigation Measure BIO-1 to be insufficient in scope and timing to reduce impacts to a level less than significant.

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

⁵ California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

Mitigation Measure BIO-1: Burrowing Owl Habitat Assessment and Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012 or most recent version) prior to all vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites (occupied site means at least one burrowing owl or its sign has been observed within the last three years; may be indicated by owl sign including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site), acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation 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. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigating Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls and the conservation status of adjacent or nearby suitable habitat, along with proposed relocation actions. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval. If Project activities, including burrow exclusion and closure, could result in take of burrowing owl, appropriate CESA authorization should be obtained prior to commencement of Project activities.

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* (CDFG, 2012 or most recent version). Preconstruction surveys should

be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities. ~~A pre-construction protocol survey for burrowing owls in accordance with the Coachella Valley Multiple Species Conservation Plan Area shall be conducted. This mitigation measure requires a clearance survey be conducted not more than 14 days prior to grubbing, grading, or other surface disturbances to determine whether the species still occurs on the site. A final clearance survey must be conducted 24 hours prior to ground disturbance. If the owl is present during the breeding season (February 15 through September 15), a qualified biologist will establish a buffer area (a no disturbance zone) around the active burrow. When it is determined that all young owls have permanently left the burrow (fledged), the buffer area may be abandoned, and the adult owls captured and relocated. All these activities must be governed by a plan approved by CDFW. If an owl is present, regardless of the presence of young, a qualified biologist must develop either an avoidance or a relocation plan for review and approval by the CDFW, approved under permit.~~

4) *Lake and Streambed Alteration Program*

Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following: divert or obstruct the natural flow of any river, stream, or lake; change the bed, channel, or bank of any river, stream, or lake; use material from any river, stream, or lake; or deposit or dispose of material into any river, stream, or lake. Note that "any river, stream, or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Page 4.3.14 of the DEIR indicates the "BAR [Biological Assessment Report] conducted on August 22, 2023 (see *Appendix C*) did not indicate the presence of any riparian habitat on the Project site. Therefore, implementation of the proposed Project would have no impact on riparian habitat or other sensitive natural community as identified in local or regional plans, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service." Also, page 6 of the Biological Assessment Report states that "disturbance along the northern Project boundary in the form of a maintained road and recently installed underground infrastructure (electric) precludes potential offsite flows from entering the property." The DEIR and its supporting documents lack additional information describing how the maintained road and recently installed underground infrastructure would stop stormflows from entering the Project site from the north. In contrast, the DEIR indicates that the Project proposes the construction of significant

flood control infrastructure to address stormflows; page 4.9.22 states that “four (4) underground infiltration basins, two (2) above ground detention basins around Building 1 as well as two (2) underground detention basins around Building 2 would capture all offsite flows and runoff at the site.” CDFW has identified several ephemeral streams within the Project site, which are subject to Fish and Game Code section 1600 et seq. Based on review of historical aerial imagery using Google Earth, a minimum of two ephemeral streams are located within the western half of the Project site and one ephemeral stream within the eastern half of the Project site. Stormflows for these ephemeral streams located onsite originate from Mission Creek, west of Highway 62, and move through a network of ephemeral washes traversing a broad alluvial plain to the north before entering the Project site. Stream indicators for the ephemeral streams located onsite include, but are not limited to, evidence of erosion, scour, and stream-aligned vegetation visible in historical aerial imagery. CDFW considers the Project site to contain streams subject to Fish and Game Code section 1600 et seq.

To ensure that impacts to streams and associated fish and wildlife are reduced to a level less than significant, CDFW recommends that the City add the following mitigation measure to a revised DEIR:

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

Prior to construction, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

5) Artificial Nighttime Lighting

The Project site is located adjacent to vacant areas containing native habitat to the north and east—areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, bats including western yellow bat (*Lasiurus xanthinus*; CVMSHCP Covered Species), and other nocturnal and crepuscular wildlife. The Project’s proposed artificial nighttime lighting has the potential to significantly and adversely affect wildlife in these vacant, vegetated areas adjacent to the Project site. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and

seasonal cycles; the detection of resources and natural enemies; and navigation.⁶ Many species use photoperiod cues for communication (e.g., bird song⁷), determining when to begin foraging,⁸ behavioral thermoregulation,⁹ and migration.¹⁰ Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.¹⁰

Although the Project description indicates that “all light sources in the site’s parking areas, walkway and on the exterior of proposed buildings would be shielded downward” (page 4.1.16 of the DEIR), CDFW considers these plans to shield lighting insufficient in scope and timing to reduce impacts to a level less than significant. To support the City in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends the City add the following mitigation measure to a revised DEIR:

Mitigation Measure BIO-[C]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the City of Palm Springs and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City of Palm Springs and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The City of Palm Springs and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

6) Coachella Valley Multiple Species Habitat Conservation Plan

Salvage of Sand-Dependent Covered Species

Section 6.6.1 of the CVMSHCP (Obligations of Local Permittees) states that within and

⁶ 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.

⁷ Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

⁸ Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

⁹ Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

¹⁰ Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.

outside Conservation Areas “on parcels approved for Development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species in accordance with the Implementation Manual.” The DEIR and Biological Assessment Report lack information on the potential for Coachella Valley round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*) to occupy the Project site and surrounding area and appropriate avoidance and minimization measures. The Project site contains CVMSHCP modeled habitat for Coachella Valley round-tailed ground squirrel. To be consistent with CVMSHCP requirements, CDFW recommends that the City include in a revised DEIR the following mitigation measure:

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

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

7) Landscaping

Page ES.3 of the DEIR indicates that the “proposed development would add new landscaping to the site with a mix of climate-adapted shrubs and grasses, and shade trees, in the parking areas and along building and perimeter buffers.” The DEIR lacks additional information on plant species that will be used as part of the landscape plan. CDFW recommends that the DEIR include recommendations regarding landscaping from Section 4.0 of the CVMSHCP “Table 4-112: Coachella Valley Native Plants Recommended for Landscaping” (pp. 4-180 to 4-182; <https://cvmshcp.org/plan-documents/>). CDFW also recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants. More information on native plants suitable for the Project location and nearby nurseries is available at Calscape: <https://calscape.org/>. Local water agencies/cities and resource conservation cities in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California’s Save our Water website: <https://saveourwater.com/>.

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

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communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNNDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES


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

CONCLUSION

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

CDFW personnel are available for consultation regarding biological resources and strategies to avoid and minimize impacts. Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Senior Environmental Scientist Specialist, at jacob.skaggs@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
<p>Mitigation Measure BIO-[A]: Special-Status Plants</p> <p>Prior to Project construction activities, a thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see https://wildlife.ca.gov/Conservation/Plants) shall be performed by a qualified biologist. Should any state-listed plant species (excluding CVMSHCP Covered Species) be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should any species of native plants designated as rare, threatened, or endangered by state law (excluding CVMSHCP Covered Species) be</p>	<p>Timing: Prior to Project construction activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>

<p>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>Mitigation Measure BIO-2: Nesting Birds</p> <p>To the greatest extent feasible, Project construction activities will avoid the peak nesting season (February 1 through September 15). Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to all vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>	<p>Timing: No more than 3 days prior to all vegetation removal or ground-disturbing activities throughout all phases of the Project.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>
<p>Mitigation Measure BIO-1: Burrowing Owl Habitat Assessment and Surveys</p> <p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG, 2012 or most recent version) prior to all vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused</p>	<p>Timing: Focused surveys: Prior to vegetation removal or ground-disturbing activities for all phases of the Project. Pre-construction surveys: No less</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>

<p>surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites (occupied site means at least one burrowing owl or its sign has been observed within the last three years; may be indicated by owl sign including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site), acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation 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. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigating Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls and the conservation status of adjacent or nearby suitable habitat, along with proposed relocation actions. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval. If Project activities, including burrow exclusion and closure, could result in take of burrowing owl, appropriate CESA authorization should be obtained prior to commencement of Project activities.</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</i></p>	<p>than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance for all phases of the Project and when there is a pause in construction of more than 30 days.</p> <p>Methods: See Mitigation Measure</p>	
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<p>Report on Burrowing Owl Mitigation (CDFG, 2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>		
<p>Mitigation Measure BIO-[B]: CDFW Lake and Streambed Alteration Program</p> <p>Prior to construction, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project</p>	<p>Timing: Prior to construction.</p> <p>Methods: See Mitigation Measure.</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>

<p>Mitigation Measure BIO-[C]: Artificial Nighttime Lighting</p> <p>Throughout construction and the lifetime operations of the Project, the City of Palm Springs and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City of Palm Springs and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City of Palm Springs and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.</p>	<p>Timing: Throughout construction and the lifetime operations of the Project.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>
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<p>Mitigation Measure BIO-[D]: Salvage of Sand-Dependent Covered Species</p> <p>Prior to vegetation removal or ground-disturbing activities, the City of Palm Springs will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species within the Project site.</p>	<p>Timing: Prior to vegetation removal or ground-disturbing activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Palm Springs and Project proponent</p> <p>Monitoring and Reporting: City of Palm Springs</p>
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