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GAVIN NEWSOM, Governor
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April 29, 2024
Sent via email

Governor's Office of Planning & Research

Apr 29 2024

STATE CLEARINGHOUSE

Gabriel Perez
Development Services Director
City of Coachella
53990 Enterprise Way
Coachella, CA 92236

Connect Coachella Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2024040320

Dear Gabriel Perez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Coachella (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: City of Coachella

Objective: The proposed Project consists of the addition of two non-motorized bicycle routes in the City of Coachella. The "North-South" route will be a Class 1 bike path extending approximately 3.8 miles along the east side of Grapefruit Boulevard from Avenue 48 south to Avenue 54. This will incorporate an existing bike path, which begins at Avenue 50 and ends at 9th Street. The "East-West" route of the Project will include 3.2 miles of new Class II bike lanes along both the north and south sides of Avenue 54 beginning at Van Buren Street, crossing Grapefruit Boulevard, and ending at the Coachella Valley Stormwater Channel where the Project will meet the future CV Link path. A shorter 0.08-mile Class I bike path extension is proposed on the south side of Avenue 48 starting from the southeast corner of the Dillon Road intersection and ending at the southeast corner of the Grapefruit Boulevard intersection.

The Project also proposes numerous improvements to intersections and roadways throughout the routes. New crosswalks and ADA curb ramps will be installed at various intersections to provide safer and more visible non-motorized access between the bike paths, services, and residential districts. A new roundabout with median dividers is proposed for the Grapefruit Boulevard/Tyler Street intersection. New road striping delineating the bike lanes will be applied throughout the routes as well as new multilane striping and directional arrows to help guide motorized traffic. A new railroad crossing for pedestrians and other non-motorized transport will be constructed where Avenue 54 crosses the Union Pacific Railroad. Additionally, new signs and posts will be installed along the routes. New drought-tolerant landscaping is proposed in some areas along the Project's alignment.

Location: The proposed Project includes installing 3.8 miles of Class I Bike Path along Highway 111/Grapefruit Boulevard between Avenue 48 and Avenue 54 (with a gap between Leoco Lane and 9th Street where there is an existing segment of bike path); and 3.2 miles of Class II Bike lanes on Avenue 54 between Polk Street and Van Buren Street. The project route is located in paved roads on Avenue 54, and in an approximately 25-foot wide ROW that traverses both cleared and developed areas on

the east side of Hwy. 111/Grapefruit Blvd. The segments of proposed bike path along Hwy. 111/Grapefruit Blvd. are located on cleared and/or developed ground between the Union Pacific Railroad line and the eastern shoulder of Hwy. 111/Grapefruit Blvd. Surrounding land uses over the entire proposed route include commercial and residential development, and agricultural lands. Specifically, the project route traverses portions of Sections 31, 32, 5, 8, and 9, Townships 5 and 6 South; Range 8 East as shown on the United States Geological Survey (USGS) Indio, California, 7.5-minute topographic quadrangle.

Timeframe: Construction is expected to extend 14 months from June 2025 to August 2026 (page 52 of MND).

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 specifically as it relates to burrowing owl (*Athene cunicularia*) and western yellow bat (*Lasiurus xanthinus*). A complete and accurate assessment of the environmental setting and Project-related impacts to burrowing owl and western yellow bat 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 artificial nighttime lighting, western yellow bat, and the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), as well as revising the mitigation measures for nesting birds and burrowing owl.

1) Nesting Birds

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

or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

Suitable habitat for nesting birds exists within the Project's linear footprint and the open-space areas located adjacent to the Project's alignment, which contain areas with dense to sparse vegetation cover. Page 19 of the Project's Biological Resources Assessment dated October 4, 2023 (Biological Assessment) indicates that "should project-related disturbance be conducted during the nesting season (1 February through 31 August), a nesting bird clearance survey is recommended to ensure that implementation of the proposed project does not impact nesting birds." Mitigation Measure BIO-2, in the MND, indicates that if "construction occurs during the nesting season, a certified avian biologist must conduct a preconstruction nesting bird survey". CDFW considers the Mitigation Measure BIO-2 to be insufficient in scope and timing to reduce impacts to nesting birds to a level less than significant. CDFW is concerned about impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and construction. Conducting work outside the peak nesting season is an important avoidance and minimization measure. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017²). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

Although the MND includes Mitigation Measure BIO-2 for nesting birds, CDFW considers the measure insufficient to scope and timing to reduce impacts to a level less than significant. CDFW recommends that the City revise Mitigation Measure BIO-2 with the following additions in **bold** and removals in ~~strike through~~:

Mitigation Measure BIO-2: Nesting Birds

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.

Peak bBird nesting season occurs **approximately** between February 1 and September 15, and **approximately** between March 15 and August 31 for migrating bird species. To avoid impacts to resident and migratory nesting birds, all vegetation clearing, ground disturbance, and construction activity should be scheduled between September 16 and January 31. ~~if possible~~ **Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. 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. If construction occurs during the nesting season, a certified avian biologist must conduct a preconstruction nesting bird survey (NBS) immediately prior to scheduled construction activity. If active nests be identified, the biologist will demarcate a no-work buffer zone(s) around the active nest(s) and check the nest site(s) weekly until the young birds fledge and the nest(s) become inactive. The buffer zone size would be based on the nesting species, its sensitivity to disturbance, nesting stage and the expected intensity and duration of disturbance. No ground or vegetation disturbance shall occur within the nest site buffer zone(s) until the qualified biologist determines that the young have successfully fledged, and the nest is inactive. Per CDFW recommendations, a buffer of 500 feet shall be set for listed species and birds of prey, and a buffer of 100 to 300 feet shall be set for unlisted songbirds.**

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

2) *Burrowing Owl*

Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests and eggs is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Fish and Game Code section 3513

makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

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

Page 6 of the Biological Assessment states that the “entire project ROW has been routinely disturbed or in some areas completely developed and consists of largely barren ground with a scant cover of weedy plant species along the margins.” Based on review of aerial imagery, large sections of the Project’s linear footprint are located adjacent to open-space areas that contain native plants and sparse vegetation cover, open-space areas disturbed by grading/discing activities, and agricultural areas. In California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs,³ and that burrowing owls may occur in ruderal grassy fields, vacant lots, and pastures if the vegetation structure is suitable and there are useable

³ Haug, E. A., B. A. Millsap, and M. S. Martell. 1993. Burrowing owl (*Speotyto cunicularia*), in A. Poole and F. Gill, editors, *The Birds of North America*, The Academy of Natural Sciences, Philadelphia, Pennsylvania, and The American Ornithologists’ Union, Washington, D.C., USA.

burrows and foraging habitat proximity.⁴ In addition, burrowing owls frequently move into disturbed areas prior to and during construction activities since they are adapted to highly modified habitats^{5,6}. Based on review of historical aerial imagery, the Project site contains sparse vegetation cover and is adjacent to open-space areas that would provide foraging habitat for burrowing owl. Suitable habitat for burrowing owl exists within the Project's linear footprint and within open-space areas surrounding the Project's alignment.

Page 18 of the Project's Biological Assessment indicates that "no burrows suitable for burrowing owl use were observed on or adjacent to the project site. Where accessible, adjacent vacant lands were surveyed within 500 feet of the site. No burrowing owls, their sign, or burrows capable of supporting owls were observed in this buffer area." The MND and supporting documents lack a description of the survey methods used to detect burrowing owl within and adjacent to the Project's linear footprint. Given the MND's lack of findings from a recent habitat assessment and focused surveys for burrowing owl following the guidelines in the *Staff Report on Burrowing Owl Mitigation*⁷, the number of suitable and occupied burrows within the Project site and surrounding areas is unknown. Because suitable habitat for burrowing owls exists within the Project site, CDFW recommends the MND is revised to include the findings of focused surveys for burrowing owl following guidelines outlined 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 potential impacts to burrowing owls are reduced to less than significant.

⁴ Gervais, J. A., D. K. Rosenberg, R. G. Anthony. 2003. Space use and pesticide exposure risk of male burrowing owls in an agricultural landscape. *Journal of Wildlife Management* 67: 155-164.

⁵ Chipman, E. D., N. E. McIntyre, R. E. Strauss, M. C. Wallace, J. D. Ray, and C. W. Boal. 2008. Effects of human land use on western burrowing owl foraging and activity budgets. *Journal of Raptor Research* 42(2): 87-98.

⁶ Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. *Condor* 73:162-176.

⁷ California Department of Fish and Game (CDFG). 2012. Staff report of burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <http://www.dfg.ca.gov/wildlife/nongame/survevmonitor.html>

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

Mitigation Measure BIO-1: Burrowing Owl Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities. ~~Should they be identified on the project site burrowing owls must be either avoided or relocated prior to any ground disturbance or plant removal. To ensure that no burrowing owls have moved to the Project route since the biological survey was conducted in August 2023, two take~~

~~avoidance surveys of the Project route must be conducted: the first survey should take place 14-30 days prior to initiating ground disturbance activities, in conformance with CDFW's protocol for burrowing owl. Because burrowing owls are known to return to sites, a follow-up survey is required within 24 hours of initiating ground disturbance. Should burrowing owls be detected, CDFW shall be contacted as soon as possible to determine the next course of action. CDFW and USFWS~~ must grant permission to relocate burrowing owls.

3) Artificial Nighttime Lighting

The MND and supporting documents have contradictory language on if the Project will include new sources of artificial nighttime lighting. Page 23 of the MND indicates that the "Project does not propose to install lights along the route." In contrast, pages 1-2 of the Draft Connecting Coachella Hydrology Memo, included in the MND, indicate that lighted bollards and enhanced traffic signals will be included as safety enhancements for the Project. 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— areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife. To allow CDFW to conduct a meaningful review of impacts to biological resources, CDFW recommends the MND and its supporting documents are revised to clearly indicate if artificial lighting will be included as a part of the Project.

Artificial nighttime lighting, if proposed by the Project, has the potential to significantly and adversely affect wildlife in the open-space areas adjacent to the Project site. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation⁸. Many species use photoperiod cues for communication (e.g., bird song⁹), determining when to begin foraging¹⁰, behavioral thermoregulation¹¹, and migration¹². Phototaxis, a phenomenon

⁸ 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.

⁹ Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

¹⁰ Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

¹¹ Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

¹² Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.

that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it⁸.

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. CDFW also recommends the MND is revised to include lightning design plans and lighting specifications to allow CDFW to conduct a meaningful review and provide appropriate biological expertise. The MND does not include a mitigation measure regarding artificial nighttime lighting. To support the City in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends that the City add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[A]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the City of Coachella 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 Coachella 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 Coachella 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.

4) *Western Yellow Bat*

Page 18 of the Project's Biological Resources Assessment indicates that "only one sensitive mammal: western yellow bat (*Lasiurus xanthinus*) is expected to have any potential to occur along the project route. There is a very low potential for this species to roost in the skirts of some of the landscaped palms present adjacent to a few areas of the proposed bike path route along Grapefruit Boulevard/Hwy. 111 and Avenue 54." Page 34 of the MND indicates that "five young California fan palms [(*Washingtonia filifera*)] occur in the right of way where the bike path is proposed on the north side of Avenue 54 east of Grapefruit Blvd. Further east on Avenue 54 extending to the end of the Project's East-West route a row of 22± Mexican fan palms [(*Washingtonia robusta*)] occurs. These palms on Avenue 54 are proposed to be removed to construct the new bike path. Fan palms are known to provide habitat for Western yellow bats and nesting birds." The MND does not indicate if focused surveys for western yellow bat or other

palm-roosting bat species were completed for the MND. The MND also does not include any measures for avoiding, minimizing, or mitigating impacts to western yellow bats.

Section 15070(b)(2) of the CEQA Guidelines states that one of the conditions under which a mitigated negative declaration shall be prepared is when there is no substantial evidence that the project as revised may have a significant effect on the environment. Section 15071(e) of the CEQA Guidelines states that a negative declaration shall include mitigation measures in the project to avoid potentially significant effects. Therefore, the Lead Agency must demonstrate that all impacts to biological resources are less than significant through appropriate avoidance, minimization, and mitigation measures. Western yellow bat is a California Species of Special Concern that meets the CEQA definition of a rare species (CEQA Guidelines § 15380), and the Lead Agency should demonstrate in the MND that impacts to western yellow bat are avoided, minimized, and mitigated to a level that reduces impact to less than significant.

In California, western yellow bats appear to roost exclusively in the skirt of dead fronds of both native and non-native palm trees and appear to be limited in their distribution by availability of palm habitat¹³. Western yellow bats probably form small maternity groups in palm trees¹⁴. Some individuals or populations may be migratory, although some individuals appear to be present year-round, even in the northernmost portion of the range including southern California².

To support the City of Coachella in identifying appropriate avoidance, minimization, and mitigation measures and reducing impacts to a level that is less than significant, CDFW recommends the City of Coachella include in a revised MND the findings of focused bat surveys as described in the measure below. CDFW also recommends that the following mitigation measure below is added to a revised MND:

Mitigation Measure BIO-[B]: Surveys for Daytime, Nighttime, Wintering (Hibernacula), and Maternity Roosting Sites for Bats

Prior to the initiation of Project activities within suitable bat roosting habitat, the City of Coachella shall retain a qualified biologist to conduct focused surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. Two spring surveys (April through June) and two winter surveys

¹³ Bolster, B.C., Bolster, B.C., (ed.). 1998. Terrestrial Mammal Species of Special Concern in California. Draft Final Report. May. Sacramento, CA. Prepared by Paul W. Collins. Prepared for California Department of Fish and Game, Nongame Bird and Mammal Conservation Program, Sacramento, CA.

¹⁴ Life History Account for Western Yellow Bat, California Department of Fish and Wildlife, February 2008.

(November through January) shall be performed by qualified biologists. Surveys shall be conducted during favorable weather conditions only. Each survey shall consist of one dusk emergence survey (start one hour before sunset and last for three hours), followed by one pre-dawn re-entry survey (start one hour before sunrise and last for two hours), and one daytime visual inspection of all potential roosting habitat on the Project site. Surveys shall be conducted within one 24-hour period. Visual inspections shall focus on the identification of bat sign (i.e., individuals, guano, urine staining, corpses, feeding remains, scratch marks and bats squeaking and chattering). Bat detectors, bat call analysis, and visual observation shall be used during all dusk emergence and pre-dawn re-entry surveys.

If active maternity roosts are identified in the work area or 500 feet extending from the work area, Project construction will only occur between October 1 and February 28, outside of the maternity roosting season when young bats are present but are not yet ready to fly out of the roost. Maternity roosts shall not be evicted, excluded, removed, or disturbed. If active hibernacula are identified in the work area or 500 feet extending from the work area, a minimum 500-foot no-work buffer shall be provided around wintering roosts (hibernacula). The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers shall be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise. Hibernacula roosts shall not be evicted, excluded, removed, or disturbed. If avoidance of a hibernacula is not feasible, the Project Biologist will prepare a relocation plan to remove the hibernacula and provide for construction of an alternative bat roost outside of the work area. A bat roost relocation plan shall be submitted for CDFW review and approval prior to construction activities. The qualified biologist will implement the relocation plan and new roost sites shall be in place before the commencement of any ground-disturbing activities that will occur within 500 feet of the hibernacula. New roost sites shall be in place prior to the initiation of Project-related activities to allow enough time for bats to relocate. Removal of roosts will be guided by accepted exclusion and deterrent techniques.

Because the Project proposes removal of non-native fan palms that may support roosting habitat for western yellow bat, CDFW recommends the City implement appropriate avoidance, minimization, and mitigation measures to ensure impacts to this species and other bats are reduced to less than significant. Removal of palm trees that contain roosting habitat for bats can subject bats to impacts ranging from permanent loss of day roosts, including maternity roosts, to direct mortality if avoidance,

minimization, and mitigation measures are not implemented. CDFW recommends that the City of Coachella add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[C]: Avoidance of Bats during Tree Removal

Tree removal work with the potential to house roosting bats shall be performed between September 15 and October 31 to minimize direct impacts to roosting bats. This time period is after young are volant (flying) but before expected onset of torpor (wintering inactivity). Tree removal work may also be conducted between February 15 and March 31, following winter torpor and prior to the start of the maternity season. No tree removals shall occur during the hibernation season, which typically begins in November or December (depending on weather conditions) and continues through mid-February, due to the high potential for mortality of hibernating bats. Depending on weather conditions and the best professional judgement of a qualified bat biologist approved by CDFW, tree removal work may be performed in November if the forecasted nighttime low temperatures on the evening of removal and the subsequent four evenings do not drop below 45°F. In November, if weather is cold (i.e., forecasted nighttime low temperatures reach 45°F or less for that evening and the next four evenings), then no tree removals shall be performed. All tree removals shall require a two-step removal process and the involvement of a CDFW-approved qualified bat biologist to ensure that no roosting bats are killed during this activity. The following two-step tree removal process shall be implemented over two consecutive days: on Day 1, live palm fronds located above the frond skirt, and as identified by a qualified bat biologist, will be removed. On Day 2, the remainder of the tree may be removed without supervision by a qualified bat biologist.

5) Coachella Valley Multiple Species Habitat Conservation Plan

The Project is located within the CVMSHCP Plan Boundary and outside of a Conservation Area. Page 18 of the MND indicates that “participation in the CVMSHCP, payment of the CVMSHCP development/mitigation fee and participation in the plan will fully mitigate project related impacts (although none are anticipated) to any of these CVMSHCP covered species.” Section 5.2.1.1 of the CVMSHCP indicates that “Local 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.” The Project site contains suitable habitat for burrowing owl; therefore, the City is required to impose a local development fee for the Project. To document this obligation, 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 Coachella 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.

6) Landscaping

Page 22 of the MND indicates that “drought-tolerant landscaping will be installed, and a vegetated swale will be added to the east side of the intersection” and “along the North-South route where possible, new landscaping will be added where oleanders will be removed”. 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/cities and resource conservation cities in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California’s Save our Water website: <https://saveourwater.com/>. CDFW also recommends that the 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 an assessment of impacts associated with burrowing owl, western yellow bat, and artificial nighttime lighting. The CEQA Guidelines indicate that recirculation is required when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that the MND is revised to include a complete assessment of biological resources (burrowing owl and western yellow bat) and updated Project description regarding artificial nighttime lighting, and that the MND is 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, Senior Environmental Scientist Specialist, at jacob.skaggs@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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 City of Coachella
 April 29, 2024
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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
<p>Mitigation Measure BIO-2: Nesting Birds</p> <p>Peak bird nesting season occurs approximately between February 1 and September 15, and approximately between March 15 and August 31 for migrating bird species. To avoid impacts to resident and migratory nesting birds, all vegetation clearing, ground disturbance, and construction activity should be scheduled between September 16 and January 31. Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified</p>	<p>Timing: No more than 3 days prior to vegetation removal or ground-disturbing activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Coachella and Project proponent</p> <p>Monitoring and Reporting: City of Coachella</p>

<p>biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p>Mitigation Measure BIO-1: Burrowing Owl Surveys</p> <p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report on Burrowing Owl Mitigation</i> prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to</p>	<p>Timing: Focused surveys: Prior to vegetation removal or ground-disturbing activities. Pre-construction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Coachella and Project proponent</p> <p>Monitoring and Reporting: City of Coachella</p>

<p>occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities. CDFW and USFWS must grant permission to relocate burrowing owls.</p>		
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<p>Mitigation Measure BIO-[A]: Artificial Nighttime Lighting</p> <p>Throughout construction and the lifetime operations of the Project, the City of Coachella 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 Coachella 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 Coachella 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 Coachella and Project proponent</p> <p>Monitoring and Reporting: City of Coachella</p>
<p>Mitigation Measure BIO-[B]: Surveys for Daytime, Nighttime, Wintering (Hibernacula), and Maternity Roosting Sites for Bats</p> <p>Prior to the initiation of Project activities within suitable bat roosting habitat, Desert Recreation District shall retain a qualified biologist to conduct focused surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. Two spring surveys (April through June) and two winter surveys (November through January) shall be performed by</p>	<p>Timing: See Mitigation Measure</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Coachella and Project proponent</p> <p>Monitoring and Reporting: City of Coachella</p>

<p>qualified biologists. Surveys shall be conducted during favorable weather conditions only. Each survey shall consist of one dusk emergence survey (start one hour before sunset and last for three hours), followed by one pre-dawn re-entry survey (start one hour before sunrise and last for two hours), and one daytime visual inspection of all potential roosting habitat on the Project site. Surveys shall be conducted within one 24-hour period. Visual inspections shall focus on the identification of bat sign (i.e., individuals, guano, urine staining, corpses, feeding remains, scratch marks and bats squeaking and chattering). Bat detectors, bat call analysis, and visual observation shall be used during all dusk emergence and pre-dawn re-entry surveys.</p> <p>If active maternity roosts are identified in the work area or 500 feet extending from the work area, Project construction will only occur between October 1 and February 28, outside of the maternity roosting season when young bats are present but are not yet ready to fly out of the roost. Maternity roosts shall not be evicted, excluded, removed, or disturbed. If active hibernacula are identified in the work area or 500 feet extending from the work area, a minimum 500-foot no-work buffer shall be provided around wintering roosts (hibernacula). The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers shall be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise. Hibernacula roosts shall not be evicted, excluded,</p>		
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<p>removed, or disturbed. If avoidance of a hibernacula is not feasible, the Project Biologist will prepare a relocation plan to remove the hibernacula and provide for construction of an alternative bat roost outside of the work area. A bat roost relocation plan shall be submitted for CDFW review and approval prior to construction activities. The qualified biologist will implement the relocation plan and new roost sites shall be in place before the commencement of any ground-disturbing activities that will occur within 500 feet of the hibernacula. New roost sites shall be in place prior to the initiation of Project-related activities to allow enough time for bats to relocate. Removal of roosts will be guided by accepted exclusion and deterrent techniques.</p>		
<p>Mitigation Measure BIO-[C]: Avoidance of Bats during Tree Removal</p> <p>Tree removal work with the potential to house roosting bats shall be performed between September 15 and October 31 to minimize direct impacts to roosting bats. This time period is after young are volant (flying) but before expected onset of torpor (wintering inactivity). Tree removal work may also be conducted between February 15 and March 31, following winter torpor and prior to the start of the maternity season. No tree removals shall occur during the hibernation season, which typically begins in November or December (depending on weather conditions) and continues through mid-February, due to the high potential for mortality of hibernating bats. Depending on weather conditions and the best professional judgement of a qualified bat biologist approved by CDFW, tree removal work may be performed in November if the</p>	<p>Timing: See Mitigation Measure</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Coachella and Project proponent</p> <p>Monitoring and Reporting: City of Coachella</p>

<p>forecasted nighttime low temperatures on the evening of removal and the subsequent four evenings do not drop below 45°F. In November, if weather is cold (i.e., forecasted nighttime low temperatures reach 45°F or less for that evening and the next four evenings), then no tree removals shall be performed. All tree removals shall require a two-step removal process and the involvement of a CDFW-approved qualified bat biologist to ensure that no roosting bats are killed during this activity. The following two-step tree removal process shall be implemented over two consecutive days: on Day 1, live palm fronds located above the frond skirt, and as identified by a qualified bat biologist, will be removed. On Day 2, the remainder of the tree may be removed without supervision by a qualified bat biologist.</p>		
<p>Mitigation Measure BIO-[D]: CVMSHCP Compliance</p> <p>Prior to construction and issuance of any grading permit, the City of Coachella 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 Coachella and Project proponent</p> <p>Monitoring and Reporting: City of Coachella</p>