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Sent via email

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**Indio Gateway (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2024041240**

Dear Kendra Reif:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Indio 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.

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: Majestic Realty Co.

Objective: The objective of the Project entails a Tentative Parcel Map application to subdivide the ±19.09-acre Project site into four numbered parcels and two lettered parcels and a Design Review application for the proposed development of a General Plan-conforming and zone-conforming workplace complex. In addition, a Conditional Use Permit (CUP) is required for a proposed convenience market, gas station, and car wash. Specifically, the proposed Design Review calls for the development of a 7-Eleven convenience store/gas station/car wash, a Quinn Cat retail facility, and a 6-building multi-

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

tenant light industrial park. Associated improvements to the Project site would include ornamental landscaping, drive aisles, utility infrastructure, passenger vehicle parking, bicycle parking, and two water retention basins, with one basin located on the northwest portion of the site and the other basin located on the southeast portion of the site. Primary Project activities include site preparation, grading, building construction, paving, and architectural coating.

Location: The Project would be located north of the intersection of Indio Boulevard and Jefferson Street and south of the Southern Pacific Railroad and I-10 in the City of Indio, County of Riverside, State of California (33.742778, -116.261389). The Project is located within Assessor's Parcel Numbers 606-060-002, 606-080-005, and 691-190-035. The Project site is located within the Coachella Valley Multiple Species Habitat Conservation Plan area, outside of a Conservation Area.

Timeframe: The Project activities are proposed to commence in June 2024 and last approximately 22 months.

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 of Indio in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant.

I. Environmental Setting and Related Impact Shortcoming

COMMENT #1: Assessment of Biological Resources

Initial Study/Mitigated Negative Declaration (IS/MND) Document, Biological Resources Evaluation, Page #1, Section #1

Issue: The MND does not adequately identify the Project's significant, or potentially significant, impacts to biological resources.

Specific impact: The MND bases its analysis of impacts to biological resources on general biological assessments conducted by Rocks Biological Consulting on March 16, 2022, and August 17, 2022, as well as a general resource assessment and focused burrowing owl survey conducted by Ecological Consultants in 2017. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. CDFW is concerned that the field assessments are not current and that no focused or protocol-level surveys have been performed recently for the detection of special-status species. CDFW is concerned about the potential for special-status species to occur on or near the Project site. The California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of ESA-listed, CESA-listed, or other special-status species have been reported near the Project area including but not limited to the following: **Plants:** Coachella Valley milk vetch (*Astragalus lentiginosus* var. *coachellae*), deep canyon snapdragon (*Pseudorontium cyathiferum*), flat-seeded spurge (*Euphorbia platysperma*), glandular ditaxis (*Ditaxis claryana*), gravel milk-vetch (*Astragalus sabulorum*), Mecca aster (*Xylorhiza cognata*); **Invertebrates:** Casey's June beetle (*Dinacoma caseyi*), Coachella Valley giant sand-treader cricket (*Macrobaenetes valgum*), Coachella Valley Jerusalem cricket (*Stenopelmatus cahuilaensis*), monarch butterfly (*Danaus plexippus*); **Reptiles:** Coachella Valley fringe-toed lizard (*Uma inornata*), desert tortoise (*Gopherus agassizii*), flat-tailed horned lizard (*Phrynosoma mcallii*); **Birds:** American white pelican

(*Pelecanus erythrorhynchos*), black-tailed gnatcatcher (*Poliioptila melanura*), burrowing owl (*Athene cunicularia*), Cooper's hawk (*Accipiter cooperii*), Crissal thrasher (*Toxostoma crissale*), double-crested cormorant (*Nannopterum auritum*), LeConte's thrasher (*Toxostoma lecontei*), least Bell's vireo (*Vireo bellii pusillus*), loggerhead shrike (*Lanius ludovicianus*), northern harrier (*Circus cyaneus*), peregrine falcon (*Falco peregrinus anatum*), prairie falcon (*Falco mexicanus*), sharp-shinned hawk (*Accipiter striatus*), southwestern willow flycatcher (*Empidonax traillii extimus*), summer tanager (*Piranga rubra*), vermilion flycatcher (*Pyrocephalus rubinus*), yellow breasted chat (*Icteria virens*), yellow warbler (*Dendroica petechia brewsteri*); **Mammals:** American badger (*Taxidea taxus*), Palm Springs pocket mouse (*Perognathus longimembris bangsi*), Palm Springs round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), western yellow bat (*Lasiurus xanthinus*).

CDFW notes that the timeline for this Project, described in Table 1: Construction Duration (MND, pg. 22), may include an extended break of construction activities that is anticipated to last longer than 30 days. The MND does not analyze impacts to biological resources associated with the timing of project activities. CDFW is concerned that in the interim period between Project activities, environmental conditions may change. Grading and leaving a site inactive may result in the area becoming occupied by wildlife that utilize disturbed areas (e.g., ground squirrels and burrowing owls). The Project proponent should plan to repeat surveys for biological resources prior to Project activities over the life of the Project and when there is a pause in construction of more than 30 days.

Recent surveys during the appropriate times of the year are needed to identify potential impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and determine whether impacts to biological resources have been mitigated to a level that is less than significant.

Evidence impact would be significant: 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 with respect to biological resources 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 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. 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.

Recommended Potentially Feasible Mitigation Measure: To establish the existing environmental setting with respect to biological resources, CDFW recommends that a revised MND include the results of recent biological surveys as described in the following mitigation measure, as well as mitigation measures to reduce impacts to less than significant. The MND should also analyze impacts to biological resources resulting from pauses in construction. The MND should acknowledge that surveys for biological resources will need to be repeated prior to Project activities and after pauses in construction to assess the presence of biological resources and to avoid or reduce impacts to less than significant. The MND should acknowledge that wildlife may move into disturbed or graded sites when construction is paused.

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

Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within off-site areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be

addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

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

II. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #2: Burrowing Owl

IS/MND Document, Page #29-34, Section BIO-2 and Biological Technical Report, Page 10, Section 3

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are mitigated to a level less than significant.

Specific impact: Page 10 of the Biological Resources Technical Report states that “the project site has moderate potential to support bird species such as loggerhead shrike, vermilion flycatcher, and burrowing owl... This finding is generally consistent with the 2017 Biological Assessment, which also documented the site’s potential to support avian species, in particular burrowing owl.” CDFW notes that in California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs (Haug et al. 1993), and that burrowing owls may occur in ruderal grassy fields, vacant lots, and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in proximity (Gervais et al. 2003). In addition, burrowing owls frequently move into disturbed areas prior to and during construction since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs or destroying nesting, foraging, or over-wintering habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to harass owls at occupied burrows, and other activities. In addition, on page 30 of the MND, it states that “sand hummocks are present throughout the Project site.” The sand hummocks may be attractive features for burrowing owl, and these features should be included in focused surveys to determine whether they are being used by burrowing owl.

CDFW notes that impacts to burrowing owls could also occur outside of the peak nesting season because burrowing owls may start breeding earlier (in January) and because young owls may still be dependent on the adults until later in the fall. In addition, because some burrowing owls are resident in burrows year-round, impacts to this species could also occur outside of the peak nesting season. Additionally, CNDDDB/BIOS report occurrences of burrowing owl less than 0.25 mile from the Project site.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. 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.)

Recommended Potentially Feasible Mitigation Measure: CDFW appreciates the inclusion of MM BIO 2, on p.32 on the MND for burrowing owls; however, the measure is insufficient in scope to reduce impacts to a level less than significant. CDFW recommends replacing MM BIO-2 with the measure shown below to ensure that impacts to burrowing owl are reduced to less than significant. CDFW recommends that prior to commencing Project activities for all phases of Project construction, focused surveys for burrowing owl be conducted for the entirety of the Project site by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). CDFW also recommends that preconstruction surveys be conducted before Project activities and that they be repeated for any pauses in construction lasting more than 30 days. CDFW recommends the City of Indio include the following mitigation measure in a revised MND:

MM BIO-[B]: Focused and Pre-Construction Surveys for Burrowing Owl

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version) prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall 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, monitoring, relocation, minimization, and/or mitigation 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. 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 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.

COMMENT #3: Nesting Birds

IS/MND Document, Page #29-34, Section BIO-3 and Biological Technical Report, Page 10, Section 3

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to nesting birds or ensure that impacts are mitigated to a level less than significant.

Specific impact: Page 10 of the Biological Resources Technical Report states that “the project site has moderate potential to support bird species such as loggerhead shrike, vermilion flycatcher... This finding is generally consistent with the 2017 Biological Assessment, which also documented the site’s potential to support avian species.” Based on a review of the California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS), the Project has the potential to impact avian species that nest and forage in the region, including, but not limited to: American white pelican (*Pelecanus erythrorhynchos*), black-tailed gnatcatcher (*Polioptila melanura*), burrowing owl (*Athene cunicularia*), Cooper’s hawk (*Accipiter cooperii*), crissal thrasher (*Toxostoma crissale*), double-crested cormorant (*Nannopterum auritum*), LeConte’s thrasher (*Toxostoma lecontei*), least Bell’s vireo (*Vireo bellii pusillus*), loggerhead shrike (*Lanius ludovicianus*), northern harrier (*Circus cyaneus*), peregrine falcon (*Falco peregrinus anatum*), prairie falcon (*Falco mexicanus*), sharp-shinned hawk (*Accipiter striatus*), southwestern willow flycatcher (*Empidonax traillii extimus*), summer tanager (*Piranga rubra*), vermilion flycatcher (*Pyrocephalus rubinus*), yellow breasted chat (*Icteria virens*), and yellow warbler (*Dendroica petechia brewsteri*).

CDFW is concerned about potential 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 pre-construction nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017). 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. Pre-construction nesting bird surveys should also be repeated if there are pauses in construction.

Evidence impact would be significant: 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.).

Recommended Potentially Feasible Mitigation Measure: CDFW appreciates the inclusion of MM BIO-3 on p. 33 of the MND for nesting birds, however, the measure is insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends including the following measure for nesting birds in a revised MND to ensure that impacts to nesting birds are reduced to less than significant:

MM BIO-[C]: Nesting Birds

Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. If there are pauses in construction, nesting bird surveys should be repeated prior to Project 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.

COMMENT #4: Special-Status Plants

IS/MND Document, Page #30, Section A

Issue: CDFW is concerned that the field assessment conducted for the MND was not sufficient in timing and scope to detect special-status plant species that may occur on the Project site.

Specific impact: On Page 30 of the MND, it states that “special-status plant species have low or no potential for occurrence.” However, CNDDDB/BIOS indicates that the following special-status plants have historically occurred on or near the Project site: Coachella Valley milk vetch (*Astragalus lentiginosus* var. *coachellae*), deep canyon snapdragon (*Pseudorontium cyathiferum*), flat-seeded spurge (*Euphorbia platysperma*), glandular ditaxis (*Ditaxis claryana*), gravel milk-vetch (*Astragalus sabulonum*), and Mecca-aster (*Xylorhiza cognata*). CDFW is concerned that the habitat assessment did not include protocol-level surveys to detect special-status plants. Floristic assessments typically involve multiple visits to the project site at various times of year to detect plants in various blooming seasons. If the presence of special-status plant species is not determined through floristic based surveys, unauthorized take or disturbance of special-status plant species could occur. CDFW recommends a thorough, floristic-based assessment of special-status plants at the appropriate time of year be conducted, as described below.

Evidence impact would be significant: The California Rare Plant Rank 1B indicates plants that are rare, threatened, or endangered in California and elsewhere, and California Rare Plant Rank 2B indicates plants that are rare, threatened, or endangered

in California but more common elsewhere. Impacts to these species must be analyzed during preparation of environmental documents relating to CEQA because they meet the definition of rare or endangered under CEQA Guidelines §15125 (c) and/or §15380.

Recommended Potentially Feasible Mitigation Measure: CDFW recommends that prior to commencing Project activities for all phases of Project construction, a thorough, recent, floristic-based assessment of special-status plants be completed at the appropriate time(s) of year. If any rare, threatened, endangered, or other sensitive plant species are located within the Project site, CDFW recommends that the MND be revised to include appropriate avoidance, minimization, and mitigation measures. For unavoidable impacts to special status species, on-site habitat restoration 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 and discussed in detail in a revised MND. CDFW recommends the following mitigation measure be added to a revised MND:

MM BIO-[D]: 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 Natural Communities (CDFW 2018 or most recent version) shall be performed by a qualified biologist. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should other special-status plants or natural communities be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.

COMMENT #5: Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)

IS/MND Document, Page 32, Section F

Issue: The Project occurs within the CVMSHCP plan area and is subject to provisions and policies of the CVMSHCP.

Specific impact: The Project does not occur within or share a common boundary with a Conservation Area of the CVMSHCP; however, the Project is within the boundary of the Plan area. CNDDDB/BIOS indicates that the following species that are covered under the CVMSHCP have the potential to occur in the Project area, including but not limited to: burrowing owl (*Athene cunicularia*), Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*), Coachella Valley fringe-toed lizard (*Uma inornata*), Coachella giant sand-treader cricket (*Macrobaenetes valgum*), Coachella Valley Jerusalem cricket (*Stenopelmatus calhouni*), Crissal thrasher (*Toxostoma crissale*), desert tortoise (*Gopherus agassizii*), flat-tailed horned lizard (*Phrynosoma mcallii*), least Bell's vireo (*Vireo bellii pusillus*), LeConte's thrasher (*Toxostoma lecontei*), Mecca aster (*Xylorhiza cognata*), Palm Springs pocket mouse (*Perognathus longimembris bangsi*), Palm Springs round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), southwestern willow flycatcher (*Empidonax traillii extimus*), summer tanager (*Piranga rubra*), western yellow bat (*Lasiurus xanthinus*), yellow breasted chat (*Icteria virens*), and yellow warbler (*Setophaga petechia*). To be considered a covered activity, Permittees should demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. The City of Indio is the Lead Agency and a Permittee of the CVMSHCP.

With regard to obligations of Local Permittees, Section 6.6.1 of the CVMSHCP indicates that "within and outside conservation areas, on parcels approved for development, the Permittees shall encourage the opportunity to salvage Covered sand-

dependent species". The MND states (p. 30) that "the entire Project site supports disturbed stabilized shielded desert sand fields, which are characterized by interrupted/shielded sand transport systems, resulting in sand accumulations that are stabilized by vegetation and lack dune formation." This type of substrate has the potential to be occupied by several Covered Species under the CVMSHCP that are sand-dependent, including but not limited to Coachella Valley fringe-toed lizard, flat-tailed horned lizard, and Coachella Valley milkvetch. An assessment of biological resources is recommended by CDFW to determine whether these or other sand-dependent species are present on the Project site (see "Assessment of Biological Resources" and "Special-Status Plants" sections above).

Evidence impact would be significant: Within the Inland Deserts Region, CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the CVMSHCP per Section 2800 et seq. of the California Fish and Game Code on September 9, 2008. The CVMSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit. Compliance with approved habitat plans, such as the CVMSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the CVMSHCP as a result of this Project is necessary to address CEQA requirements. To obtain additional information regarding the CVMSHCP please go to: <http://www.cvmshcp.org/>.

Recommended Potentially Feasible Mitigation Measure: To comply with Local Permittee obligations under the CVMSHCP, CDFW recommends the following mitigation measure be added to a revised MND:

MM BIO-[E]: CVMSHCP Compliance

Prior to construction and issuance of any grading permit, the City of Indio 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.

In addition, if the results of the assessment of biological resources (see "Assessment of Biological Resources" and "Special-Status Plants" sections above) indicate the presence of sand-dependent Covered Species, CDFW recommends that the City of Indio coordinate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species. CDFW recommends the following mitigation measure be included in a revised MND:

MM BIO-[F]: Salvage of Sand-Dependent Covered Species

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

IS/MND Page# 72-79 Section A

Issue: The MND does not include an assessment of impacts to biological resources resulting from construction noise or mitigation measures to avoid or reduce impacts to a level less than significant.

Specific impact: On page 76 of the MND, the applicant states the expected vibration levels of construction equipment but includes no analysis of the impacts of construction noise on biological resources. Based on the nature of the proposed construction activities (i.e., Site Preparation, Grading, Building Construction, Paving and Architectural Coating), noise levels would be expected to exceed exposure levels that may adversely affect wildlife species at 55 to 60 dBA.

Evidence impact would be significant: Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

Recommended Potentially Feasible Mitigation Measure: Because of the potential for construction noise to negatively impact wildlife, CDFW recommends the City of Indio include the following additional mitigation measure in a revised MND:

MM BIO-[G]: Construction Noise

During all Project construction, the City of Indio shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. City of Indio shall ensure the use of noise suppression devices such as mufflers or enclosures for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

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 of Indio in identifying and mitigating Project impacts on biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information for a meaningful review of impacts to biological resources, including a complete assessment of biological resources. 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 a revised MND, including a complete assessment of biological resources, be recirculated for public comment. CDFW also recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised MND.

Questions regarding this letter or further coordination should be directed to Julia Charpek, Environmental Scientist, at 909.354.0937 or Julia.Charpek@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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Attachment 1: Mitigation Monitoring and Reporting Program (MMRP) for Biological Resources

| Mitigation Measure (MM) Description | Implementation Schedule | Responsible Parties |
|---|--|----------------------|
| <p>MM BIO-[A]: Assessment of Biological Resources Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within off-site areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.</p> | <p>Prior to Project construction activities</p> | <p>City of Indio</p> |
| <p>MM BIO-[B]: Burrowing Owl Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version) prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall 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, monitoring, relocation, minimization, and/or mitigation 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. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> | <p>Focused surveys: Prior to the start of Project-related activities</p> <p>Preconstruction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance</p> | <p>City of Indio</p> |

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| <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 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>MM BIO-[C]: Nesting Birds Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. If there are pauses in construction, nesting bird surveys should be repeated prior to Project 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>No more than 3 days prior to vegetation clearing or ground-disturbing activities</p> | <p>City of Indio</p> |
| <p>MM BIO-[D]: 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 Natural Communities (CDFW 2018 or most recent version) shall be performed by a qualified biologist. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should other special-status plants or natural communities be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.</p> | <p>Prior to Project construction activities</p> | <p>City of Indio</p> |
| <p>MM BIO-[E]: CVMSHCP Compliance Prior to construction and issuance of any grading permit, the City of Indio 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.</p> | <p>Prior to construction and issuance of any grading permit.</p> | <p>City of Indio</p> |
| <p>MM BIO-[F]: Sand-Dependent Species Prior to construction and issuance of any grading permit, the City of Indio shall prepare and submit to the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, for review and approval, a plan to salvage sand-dependent CVMSHCP Covered Species within the Project area. The plan shall be prepared by a qualified biologist experienced in surveying for and handling sand-dependent Covered Species. The plan shall</p> | <p>Prior to construction and issuance of any grading permit.</p> | <p>City of Indio</p> |

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| <p>include, but not be limited to, the species-specific salvage methods and timing for each sand-dependent Covered Species identified within the Project site and the location(s) where each species will be translocated. Only qualified biologist(s) with appropriate state and federal permits to handle special-status species shall carry out salvage activities.</p> | | |
| <p>MM BIO-[G]: Construction Noise During all Project construction, The City of Indio shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. City of Indio shall ensure the use of noise suppression devices such as mufflers or enclosures for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.</p> | <p>During Project activities</p> | <p>City of Indio</p> |