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GAVIN NEWSOM, Governor
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Sent via email

Kendra Reif
Principal Planner
City of Indio
100 Civic Center Mall
Indio, CA 92201
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The Oasis at Indio Project (PROJECT)
Draft Environmental Impact Report (DEIR)
SCH# 2024050578

Dear Kendra Reif:

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

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

CDFW ROLE

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

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

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: BH Properties

Objective: The Project proposes the development of a mixed-use community on approximately 183 acres of vacant land. The mixed-use Project will consist of residential, commercial, and industrial uses separated into four planning areas. The DEIR evaluates potential environmental impacts with the development of two buildout scenarios: (1) Maximum Buildout Scenario (MBS), which assumes buildout of the project resulting in 3,240 dwelling units, 20,000 square feet of retail commercial uses, and 1,806,290 square feet of industrial development; and (2) Scenario #2, which assumes lesser buildout than the MBS but within the maximum intensities permitted. Scenario #2 would result in 1,237 dwelling units, 71,600 square feet of retail commercial uses, a 128-key hotel/motel, and 1,806,290 square feet of industrial uses. The proposed Project may include an Imperial Irrigation District (IID) substation, and water quality/detention basins may be proposed along the southern portion of the site.

The proposed Project will result in new sources of artificial nighttime lighting, including landscape lighting outside of the Project's perimeter walls and lighting in parking lots, entry points, common areas, courtyards, and pedestrian paths. The Project's landscape guidelines provide for drought-tolerant and native species to support water conservation. Turf grasses will only be permitted in "use" areas that include open lawns for play/recreation and infiltration portions of detention basins.

Location: The proposed Project is situated within the City of Indio and encompasses an area of approximately 183 acres south of Avenue 42, west of Monroe Street, north of the Interstate 10 freeway, and east of Madison Street. The site is located in portions of Sections 3 through 5, Township 7 South, Range 7 East, San Bernardino Base Line and Meridian; Latitude 33°35'50" N, Longitude 116°15'39" W (approximate geographic center of the site). The project site includes Assessor's Parcel Numbers 610-020-001, -010, -012, -013, -021, -034, and -036.

Timeframe: The Project proposes construction activities starting in 2025 and ending in 2028.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The DEIR has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are reduced to less than significant.

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

Existing Environmental Setting

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

The DEIR lacks a complete assessment of biological resources within the Project site and surrounding area specifically as it relates to special-status wildlife species and burrowing owl. A complete and accurate assessment of the environmental setting and Project-related impacts to special-status wildlife species and burrowing owl is needed to both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures reduce Project impacts to less than significant.

Mitigation Measures

CEQA requires that a DEIR include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the DEIR are not adequate to avoid or reduce impacts to biological resources to below a level of

significance. To support the City in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for assessment of special-status wildlife, artificial nighttime lighting, CDFW's Lake and Streambed Alteration Program, Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) Compliance, and salvage of sand-dependent Covered Species, as well as revising the mitigation measures for nesting birds and burrowing owl.

1) Assessment of Biological Resources

Page 14 of the Project's General Biological Resources Assessment and Coachella Valley Multiple Species Habitat Conservation Plan Consistency Analysis (Biological Assessment), dated January 2023, indicates that "six (6) wildlife species occur or have some potential to occur on-site including (asterisk indicates species covered by the CVMSHCP): Coachella giant sand treader cricket (*Macrobaenetes valgum*)*, flat-tailed horned lizard (*Phrynosoma mcallii*)*, Coachella Valley fringe-toed lizard (*Uma inornata*)*, burrowing owl (*Athene cunicularia*)*, ferruginous hawk (*Buteo regalis*), and prairie falcon (*Falco mexicanus*). It is assumed that all of these species could potentially present at the site, even though the quality of the habitat is relatively poor (due to agricultural uses and mowing) most of these species have potential to occur because of the fine sands and/or open conditions present at the site." The Project's Biological Resources Survey Report (Biological Survey Report), dated May 2024, indicates that surveys in November 2023 and April 2024 focused on assessing the presence of *botanical* resources. Although the Biological Assessment analyzes the potential for special-status wildlife species to occupy the site, the DEIR and its supporting documents lack details on if species-specific protocol-level surveys for special-status wildlife species were conducted. CDFW is concerned about the potential for special-status species to occur on or near the Project site, including, but not limited to, desert kit fox (*Vulpes macrotis*; protected as a fur-bearing mammal under Title 14 of California Code of Regulations (Chap. 5, §460)) and American badger (*Taxidea taxus*; California Species of Special Concern). CDFW recommends that the DEIR is revised to include the findings of recent focused protocol-level surveys for special-status species that may occupy the Project site. CDFW also recommends that the DEIR is revised to include the findings from surveys for CVMSHCP sand-dependent Covered Species that have the potential to occupy the site, including flat-tailed horned lizard and Coachella Valley fringe-toed lizard, to help inform a salvage of these species in coordination with the Coachella Valley Conservation Commission (Implementing Entity for the CVMSHCP), as discussed in the CVMSHCP section below.

CDFW recommends that the City add the following mitigation measure to a revised DEIR:

Mitigation Measure BIO-[A]: Assessment of Special-Status Wildlife

Prior to Project construction activities, a complete and recent inventory of threatened, endangered, and other sensitive wildlife species located within the Project footprint and within offsite 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. 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) in Attachment 1 for revised MM BIO-1 and MM BIO-2, as well as CDFW-recommended MM BIO-[A], MM BIO-[B], MM BIO-[C], MM BIO-[D], and MM BIO-[E].

2) *Nesting Birds*

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

Permittees of the CVMSHCP must ensure that Covered Activities within their jurisdictions—both inside and outside Conservation Areas—do not take, possess, or needlessly destroy the nest or eggs of nesting birds. 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." 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."

Page 18 of the Project's Biological Survey Report indicates that "native and ornamental trees, as well as various other substrates on the project site, have the potential to provide nesting habitat for bird species protected by the CFGC Sections 3503 and 3513 and the MBTA. There is potential for ground- and tree-nesting birds to establish nests on the project site prior any project-related construction." The Project site contains suitable habitat for nesting birds. Mitigation Measure BIO-2 for nesting birds states that "to the extent feasible, construction activities should be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code shall be avoided. The nesting season for most birds in Riverside County extends from February 1 through September 1. If it is not possible to schedule construction activities between September 1 and January 31, then pre-construction surveys for nesting birds shall be conducted by a qualified biologist to ensure that no nests shall be disturbed during project implementation." CDFW appreciates the inclusion of Mitigation Measure BIO-2 but finds it 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.

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.

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

Mitigation Measure BIO-2: Nesting Birds

To the extent feasible, construction activities should be scheduled to avoid the peak nesting season. **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 activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the MBTA and California Fish and Game Code shall be avoided. The nesting season for most birds in Riverside County extends from February 1 through September 1. If it is not possible to schedule construction activities between September 1 and January 31, then pre-construction surveys for nesting birds shall be conducted by a qualified biologist to ensure that no nests shall be disturbed during project implementation. These surveys shall be conducted no more than five (5) days prior to the initiation of any site disturbance activities and equipment mobilization, including tree, shrub, or vegetation removal, fence installation, grading, etc. If project activities are delayed by more than five (5) days, an additional nesting bird survey shall be performed. During this survey, the biologist shall inspect all trees and other potential nesting habitats (e.g., trees and shrubs) in and immediately adjacent to the impact area for nests. Active nesting is present if a bird is building a nest, sitting in a nest, a nest has eggs or chicks in it, or adults are observed carrying food to the nest. The results of the surveys shall be documented. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the qualified biologist shall determine the extent of a construction-free buffer zone to be established around the nest (typically up to 300 feet for raptors and up to 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code shall be disturbed during~~

~~project implementation. Within the buffer zone, no site disturbance and mobilization of heavy equipment including but not limited to equipment staging, fence installation, clearing, grubbing, vegetation removal, demolition, and grading shall be permitted until the chicks have fledged.~~

3) *Burrowing Owl*

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. 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 18 of the Project’s Biological Assessment states that “Burrowing Owls are currently present on the project site. Burrows and other round structures present on the property provide habitat for burrowing owl. Suitable habitat type (Disturbed and/or Developed) for burrowing owl was also determined to be present on-site.” Page 4.4-11 of the DEIR states that “the project site provides suitable habitat for the species [burrowing owl], and owls were spotted during the field surveys in November 2023 and

April 2024.” The Project site contains suitable and occupied habitat for burrowing owl. The Project’s Biological Survey Report indicates that surveys in November 2023 and April 2024 focused on assessing the presence of *botanical* resources. The DEIR and the Project’s Biological Assessment and Biological Survey Report do not discuss if a habitat assessment and/or focused surveys were conducted specifically for burrowing owl. Given the DEIR’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*,³ the number of suitable and occupied burrows within the Project site and surrounding areas is unknown. CDFW recommends the DEIR is revised to include the findings, including survey methods and survey reports, from focused burrowing owl surveys following the guidelines in the *Staff Report on Burrowing Owl Mitigation* along with appropriate avoidance, minimization, and mitigation measures. Adequate information about burrowing owls within and surrounding the Project site support CDFW in effectively assessing potential impacts and recommending appropriate avoidance, minimization, and mitigation measures to support the City and Project proponent in reducing impacts to burrowing owls to a level less than significant.

Although the DEIR 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* (CDFG, 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, 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 impacts to occupied burrowing owl habitat or burrow cannot be

³ California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

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* (CDFG, 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. ~~Burrowing owls were located as part of the general biological survey, and therefore a pre-construction survey for burrowing owl is required before any ground disturbing activities take place. Additionally, burrowing owls may encroach or migrate to the property at any time, and therefore steps shall be taken to ensure avoidance, including reevaluating the locations/presence of burrowing owl or burrows. Pre-construction surveys shall be conducted in accordance with an accepted protocol (as determined in coordination with Wildlife Agencies). Since burrowing owls were found on the project site during this general biological survey, if burrowing owls are identified during the pre-construction survey, coordination with Wildlife Agencies shall be done as soon as practical prior to construction to develop a plan for avoidance and/or translocation prior to construction crews initiating any ground disturbance on the project site.~~

4) Artificial Nighttime Lighting

Page 4.1-56 of the DEIR indicates that the proposed Project will result in new sources of artificial nighttime lighting, including landscape lighting outside of the Project's perimeter walls and lighting in "parking lots, entry points, common areas, courtyards, and pedestrian paths." Regarding avoidance and minimization measures for outdoor lighting, Page 4.1-56 of the DEIR indicates that "all outdoor lighting shall be designed, located, installed, directed downward or toward structures, fully shielded, and maintained in order to prevent glare, light trespass, and light pollution and away from adjoining properties and public rights-of-way, so that no light fixture directly illuminates an area outside of the project site intended to be illuminated. Fully shielded means the

fixture shall be shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted, thus preventing the emission of light above the horizontal. All exterior lighting shall be located and directed so as not to emit light on adjacent properties.” Also, page 4.1-57 states that the “proposed [IID] substation would contain permanent night lighting. Lighting at the substation would consist of downward-oriented fixtures in areas where nighttime operations or maintenance activities would occur. Lights for maintenance would be turned off during times when lights are not needed.”

The Project is located across a two-lane road from agricultural and open-space areas to the north and east, and adjacent to open space areas to the west—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. The Project’s proposed artificial nighttime lighting 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 navigation.⁴ Many species use photoperiod cues for communication (e.g., bird song⁵), determining when to begin foraging,⁶ behavioral thermoregulation,⁷ and migration.⁸ Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.⁸

While plans for shielding artificial lighting and directing them away from adjacent properties support the Project in limiting lighting impacts to biological resources within areas surrounding the Project site, CDFW considers these plans insufficient in scope and timing to reduce impacts to a level less than significant. To support the City in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends the City add the following mitigation measure to a revised DEIR:

Mitigation Measure BIO-[B]: Artificial Nighttime Lighting

⁴ Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. *Biological Reviews*, 88.4: 912-927.

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

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

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

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

Throughout construction and the lifetime operations of the Project, the City of Indio 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 Indio 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 Indio and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

5) Lake and Streambed Alteration Program

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

Page 4.4-14 of the DEIR indicates that "there are no jurisdictional waters regulated pursuant to the Federal Clean Water Act (CWA) by the U.S. Army Corps of Engineers (USACE) or the Regional Water Quality Control Board (RWQCB), and no lakes, rivers, or streambeds regulated pursuant to the California Fish and Game Code by the CDFW present within the limits of the proposed project." CDFW is concerned about the accuracy of the conclusion that no streams subject to Fish and Game Code section 1600 et seq. exist within the Project site. Based on review of historical aerial imagery using Google Earth Pro, historical aerial imagery from December 2005 and August 2006 shows at least three streams, as evidenced by erosion, scour, and stream-aligned vegetation, conveying flows from the north-central section to the southeast section of the Project site. Further, at least two culverts exist along the southern boundary of the Project area that convey stormflows from the Project site under the I-10. To ensure that impacts to streams and associated fish and wildlife are reduced to a level less than significant, CDFW recommends that the City add the following mitigation measure to a revised DEIR:

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

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

6) Coachella Valley Multiple Species Habitat Conservation Plan

Local Development Mitigation Fee

The Project is located within the CVMSHCP Plan Boundary and outside of a Conservation Area. Page 4.4-14 of the DEIR states that “through the required participation in the CVMSHCP via payment of development fees, the project shall mitigate for any impacts to the Coachella Valley milkvetch and the other four wildlife species covered by the CVMSHCP.” To document the City’s obligation as a Local Permittee under the CVMSHCP to impose a local development mitigation fee for this Project, CDFW recommends the City add the following mitigation measure to a revised DEIR:

Mitigation Measure BIO-[D]: 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 and transfer of revenues to the Coachella Valley Conservation Commission.

Salvage of Sand-Dependent Covered Species

Section 6.6.1 of the CVMSHCP (Obligations of Local Permittees) states that within and outside Conservation Areas “on parcels approved for Development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species in accordance with the Implementation Manual.” Page 4.4-3 of the DEIR states that “there are six special-status wildlife species that occur or have some potential to occur on-site including Coachella giant sand treader cricket (*Macrobaenetes valgum*), flat-tailed horned lizard (*Phrynosoma mcallii*), Coachella Valley fringe-toed lizard (*Uma inornata*), burrowing owl (*Athene cunicularia*), ferruginous hawk (*Buteo regalis*), and prairie falcon (*Falco mexicanus*). It is assumed that all these species could potentially present at the site, even though the quality of the habitat is relatively poor (due to agricultural and industrial uses and clearing) most of these species have probability to occur because of the fine sands and/or open conditions present at the site.” Coachella Valley giant sand

treader cricket, flat-tailed horned lizard, and Coachella Valley fringe-toed lizard are CVMSHCP sand-dependent Covered Species that have the potential to occupy the Project site. To be consistent with the CVMSHCP, CDFW recommends that the City include in a revised DEIR the following mitigation measure:

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

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

7) Landscaping

Page 4.11-31 of the DEIR indicates that the “Specific Plan landscape guidelines provide for drought-tolerant and native species to support water conservation. Turf grasses will only be permitted in “use” areas that include open lawns for play/ recreation and infiltration portions of detention basins. The plant material used throughout the property will have drought- resistant characteristics consistent with the “desertscape” theme.” No additional details are provided on the Project’s 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 DEIR include recommendations regarding landscaping from Section 4.0 of the CVMSHCP “Table 4-112: Coachella Valley Native Plants Recommended for Landscaping” (pp. 4-180 to 4-182; <https://cvmshcp.org/plan-documents/>).

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

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types of information reported to CNDDDB can be found at the following link:
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES


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

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the DEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the DEIR lacks sufficient information for a meaningful review of impacts to biological resources, including a thorough assessment of special-status wildlife species and burrowing owls. The CEQA Guidelines indicate that recirculation is required when insufficient information in the DEIR precludes a meaningful review (§ 15088.5). CDFW recommends that a revised DEIR, including a complete assessment of biological resources (assessment of special-status wildlife species and burrowing owls) 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 DEIR.

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

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
<p>Mitigation Measure BIO-[A]: Assessment of Special-Status Wildlife</p> <p>Prior to Project construction activities, a complete and recent inventory of threatened, endangered, and other sensitive wildlife species located within the Project footprint and within offsite 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</p>	<p>Timing: Prior to Project construction activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Indio and Project proponent</p> <p>Monitoring and Reporting: City of Indio</p>

<p>biological field assessments for wildlife to be valid for a one-year period. 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>Mitigation Measure BIO-2: Nesting Birds</p> <p>To the extent feasible, construction activities should be scheduled to avoid the peak nesting season. 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.</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 Indio and Project proponent</p> <p>Monitoring and Reporting: City of Indio</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> (CDFG, 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, 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 impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl</i></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 Indio and Project proponent</p> <p>Monitoring and Reporting: City of Indio</p>
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<p>Mitigation (CDFG, 2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>		
<p>Mitigation Measure BIO-[B]: Artificial Nighttime Lighting</p> <p>Throughout construction and the lifetime operations of the Project, the City of Indio 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 Indio 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 Indio 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 Indio and Project proponent</p> <p>Monitoring and Reporting: City of Indio</p>
<p>Mitigation Measure BIO-[C]: CDFW Lake and Streambed Alteration Program</p> <p>Prior to construction, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife</p>	<p>Timing: Prior to construction</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Indio and Project proponent</p> <p>Monitoring and Reporting: City of Indio</p>

<p>(CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>		
<p>Mitigation Measure BIO-[D]: CVMSHCP Compliance</p> <p>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 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 Indio and Project proponent</p> <p>Monitoring and Reporting: City of Indio</p>
<p>Mitigation Measure BIO-[E]: Salvage of Sand-Dependent Covered Species</p> <p>Prior to vegetation removal or ground-disturbing activities, the City of Indio will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species within the Project site.</p>	<p>Timing: Prior to vegetation removal of ground-disturbing activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Indio and Project proponent</p> <p>Monitoring and Reporting: City of Indio</p>