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GAVIN NEWSOM, Governor
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August 27, 2024
Sent via email

Jon Berg
Community Development Director
City of Indian Wells
44950 Eldorado Drive
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Subject: Notice of Preparation of a Draft Environmental Impact Report
Indian Wells General Plan Update Project
State Clearinghouse No. 2024071208

Dear Jon Berg:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of Indian Wells for the Indian Wells General Plan Update (Project) pursuant 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.

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.

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

The City of Indian Wells (City) occupies an area of roughly 15 square miles in the Coachella Valley area of Riverside County, approximately 14 miles southeast of Palm Springs. Indian Wells is bounded by the City of Palm Desert to the north and west, by the City of La Quinta to the east, and by unincorporated areas of Riverside County to the north and south. The Project site is located within the boundaries of the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

The Project proposes a comprehensive General Plan Update (GPU). The GPU addresses land use, mobility, open space, conservation, safety, noise, and economic development. The GPU will be organized into six elements: Land Use, Mobility, Resource Management, Public Safety, Economic Development, and Housing. The GPU includes an update to the City's Land Use Map. It proposes to change the current land use designation of two locations. The GPU proposes changes to the Whitewater River channel consistent with ongoing efforts to improve the channel. Specifically, approximately 6.82 acres of the Whitewater River channel will be removed from designation as part of the storm channel and added to the designation of developable acreage for resort commercial uses utilizing approved channel re-design. The improvements will include engineered fill material and new slope protection on the southern slope of the channel in the vicinity of Miles Avenue. Buildout of the proposed GPU would result in 5,455 single-family units and 816 multifamily units, for a total of 6,271 residential units (consistent with the current General Plan); 5,159,667 square feet of nonresidential space (27,563 more square feet than the current General Plan); and 6,310 jobs (93 more jobs than the current General Plan).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Indian Wells in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The comments and recommendations are also offered to enable the CDFW to adequately review and comment on the proposed Project with respect to the Project's consistency with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

CDFW recognizes that the general plan EIR need not be as detailed as CEQA documents prepared for specific projects that may follow (CEQA Guidelines § 15146). CDFW also recognizes that the level of detail should be reflective of the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). However, please note that the City of Indian Wells cannot defer the analysis of significant effects of the general plan to later-tiered CEQA documents (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182).

CDFW recommends that the forthcoming DEIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the project, the DEIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

The CDFW recommends that the DEIR specifically include:

1. An assessment of the various habitat types located within the project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009²). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDDB@wildlife.ca.gov or <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data> to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project.

² Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. *A manual of California Vegetation*, 2nd ed. California Native Plant Society Press, Sacramento, California. <http://vegetation.cnps.org/>

CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive 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 & G. Code, § 3511). 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 or CVMSHCP 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.

Burrowing Owl (*Athene cunicularia*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. 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."

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. Section 3.5.6 of CDFW's Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 for the CVMSHCP 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. 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.

CDFW recommends that the City follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012); available for download from CDFW's website:

<https://www.wildlife.ca.gov/conservation/survey-protocols>. The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

- a. A habitat assessment;
- b. Surveys; and
- c. An impact assessment

As stated in the Staff Report on Burrowing Owl Mitigation, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures.

4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018³)
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).
6. A full accounting of all open space and mitigation/conservation lands within and adjacent to the Project.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project (including the plan's land use designations, policies and programs). To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:

1. A discussion of potential impacts from lighting, noise, human activity (e.g., recreation), defensible space, and wildlife-human interactions created by zoning of development projects or other project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing

³ CDFW, 2018. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities*, State of California, California Natural Resources Agency, Department of Fish and Wildlife: March 20, 2018 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>)

and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the project footprint, such as nearby public lands (e.g., National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).
3. An evaluation of impacts to adjacent open space lands from both the construction of the Project and any long-term operational and maintenance needs. The proposed Project has the potential to impact Santa Rosa and San Jacinto Mountains Conservation Area. CDFW encourages the City of Indian Wells to contact the Coachella Valley Conservation Commission to determine if any portion of the project will impact adjacent conserved lands, and to work collaboratively to avoid and minimize impacts.
4. A cumulative effects analysis developed as described under CEQA Guidelines section 15130. The DEIR should analyze the cumulative effects of the plan's land use designations, policies and programs on the environment. Please include all potential direct and indirect Project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Alternatives Analysis

CDFW recommends the DEIR describe and analyze a range of reasonable alternatives to the Project that are potentially feasible, would "feasibly attain most of the basic objectives of the Project," and would avoid or substantially lessen any of the Project's significant effects (CEQA Guidelines § 15126.6[a]). The alternatives analysis should also evaluate a "no project" alternative (CEQA Guidelines § 15126.6[e]). The no Project alternative should evaluate how the changing environment, such as climate change and drought, may affect the community if a new or revised general plan were not adopted.

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should identify mitigation measures and alternatives that are appropriate and adequate to avoid or minimize potential impacts, to the extent feasible. The City of Indian Wells should assess all direct, indirect, and cumulative impacts that are expected to occur as a result of the implementation of the Project and its long-term operation and

maintenance. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species, such as Peninsular bighorn sheep DPS (*Ovis canadensis nelsoni* pop. 2), may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:
 - Take is for necessary scientific research,
 - Efforts to recover a fully protected, endangered, or threatened species,
 - Live capture and relocation of a bird species for the protection of livestock, or
 - They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an incidental take permit for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process.

Project activities described in the DEIR should generally be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that City of Indian Wells include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts to fully protected species.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts. Sensitive plant communities with ranks S-1 or S-2 have the potential to or have been documented to occur within or adjacent to the project area, including, but not limited to: Big galleta shrub-steppe (*Pleuraphis rigida* Herbaceous Alliance), Alkali sacaton–scratchgrass–alkali cordgrass alkaline wet meadow (*Sporobolus airoides*–*Muhlenbergia asperifolia*–*Spartina gracilis* Herbaceous Alliance), elephant tree stands (*Bursera microphylla* Woodland Special Stands).

3. *California Species of Special Concern* (CSSC): CSSC status applies to animals generally not listed under the federal Endangered Species Act or the CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. CSSCs should be considered during the environmental review process. CSSCs have the potential or have been documented to occur within or adjacent to the Project area, including, but not limited to: **Reptiles:** flat-tailed horned lizard (*Phrynosoma mcallii*); **Birds:** burrowing owl (*Athene cunicularia*), crissal thrasher (*Toxostoma crissale*), LeConte's thrasher (*Toxostoma lecontei*), summer tanager (*Piranga rubra*), vermilion flycatcher (*Pyrocephalus rubinus*), yellow breasted chat (*Icteria virens*), yellow warbler (*Dendroica petechia brewsteri*); **Mammals:** Palm Springs pocket mouse (*Perognathus longimembris bangsi*), Palm Springs round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), western yellow bat (*Lasiurus xanthinus*).
4. *Mitigation:* CDFW considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement, and preservation should be evaluated and discussed in detail. Where habitat preservation is not available onsite, offsite land acquisition, management, and preservation should be evaluated and discussed in detail.

The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the DEIR. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).

CDFW recommends that the DEIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project. Furthermore, in order for mitigation measures to be effective, they need to be specific, enforceable, and feasible actions that will improve environmental conditions.

5. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in advance of project impacts in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

6. *Nesting Birds and Migratory Bird Treaty Act*: Please note that 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: Fish and Game Code section 3503 makes it 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) 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 the 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.).

CDFW recommends that the DEIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: project phasing and timing (e.g., conducting work outside the peak nesting season), monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the project site. If pre-construction surveys are proposed in the DEIR, the CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner. 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.

7. *Moving out of Harm's Way*: To avoid direct mortality to any non-listed terrestrial wildlife, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Any individuals found shall not be harassed and shall be allowed to leave the Project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-fully protected wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the Project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat near the site of capture. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Only biologists with appropriate authorization by CDFW shall move CESA-listed species. Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss.
8. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or

endangered species as studies have shown that these efforts are experimental in nature and largely unsuccessful.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in “take” (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of State-listed CESA species, either through construction or over the life of the project; unless this Project is proposed to be a covered activity under the CVMSHCP. It is the policy of CESA to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. CDFW must comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the DEIR addresses all Project impacts to listed species and specify a mitigation monitoring and reporting program that will meet the requirements of CESA.

Based on review of CNDDDB and Biogeographic Information and Observation System (BIOS), and/or knowledge of the project site/vicinity/general area, CDFW is aware that the following CESA-listed species have the potential to occur onsite/have previously been reported onsite: **Plants:** Algodones Dunes sunflower (*Helianthus niveus* ssp. *tephrodes*); **Reptiles:** Coachella Valley fringe-toed lizard (*Uma inornata*), desert tortoise (*Gopherus agassizii*); **Fish:** desert pupfish (*Cyprinodon macularius*); **Birds:** least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*); **Mammals:** Peninsular bighorn sheep DPS (*Ovis canadensis nelsoni* pop. 2).

Coachella Valley Multiple Species Habitat Conservation Plan

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/>.

The proposed Project occurs within the CVMSHCP area and is subject to the provisions and policies of the CVMSHCP. In order 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 Indian Wells is the Lead Agency and is signatory to the Implementing Agreement of the CVMSHCP. The project is located within Santa Rosa and San Jacinto Mountains Conservation Area. The Conservation Objectives for Santa Rosa and San Jacinto Mountains Conservation Area are identified in Section 4.3.21 of the CVMSHCP. Because the proposed Project is located within a Conservation Area it is subject to the Joint Project Review (JPR) process through the Coachella Valley Conservation Commission (CVCC). The Project will need to demonstrate consistency with the Conservation Objectives (as identified in CVMSHP Section 4.3.21), and address Avoidance, Minimization, and Mitigation Measures (CVMSHCP Section 4.4), and Land Use Adjacency Guidelines (CVMSHCP Section 4.5).

Regardless of whether take of threatened and/or endangered species is obtained through the CVMSHCP or through a CESA ITP, the DEIR needs to address how the proposed Project will affect the conservation objectives of the CVMSHCP. Therefore, all surveys required by the CVMSHCP to determine consistency should be conducted and results included in the DEIR so that CDFW can adequately assess whether the Project will impact the CVMSHCP.

CDFW Lake and Streambed Alteration Program

Based on review of material submitted with the NOP and review of aerial photography, several waterways occur throughout the City of Indian Wells including the Whitewater River. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please 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.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To submit a Lake or Streambed Alteration notification package, please go to <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>.

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Landscaping

To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>. CDFW also recommends that the 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/>).

Construction Noise

Project-related construction has the potential to generate a substantial temporary or permanent increase in ambient noise levels in the vicinity of the Project. CDFW recommends that the DEIR include an analysis of impacts to wildlife from Project-related construction noise, and appropriate avoidance, minimization, and mitigation measures that will reduce impacts to less than 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 dB⁴.

⁴ Barber, J. R., K. R. Crooks, and K. M. Fristrup. 2009. The costs of chronic noise exposure for terrestrial organisms. *Trends in Ecology and Evolution* 25:180-189.

Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats^{5,6,7,8}. 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^{9,10}. Noise has also been shown to reduce the density of nesting birds¹¹ and cause increased stress that results in decreased immune responses¹². The City of Indian Wells should include measures in the DEIR to ensure the following: restricting the use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning); restricting the use of generators except for temporary use in emergencies; provide power to sites by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems; ensure the use of noise suppression devices such as mufflers or enclosure for generators; and sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

Artificial Nighttime Lighting

The Project will introduce new sources of artificial lighting. CDFW recommends that the DEIR include lighting design specifications for all artificial nighttime lighting that will be used by the Project, an analysis of the direct and indirect impacts of artificial nighttime lighting on biological resources, and appropriate avoidance, minimization, and mitigation measures that will reduce impacts to less than significant. The direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures should be included in the DEIR.

Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and

⁵ Sun, J. W. C., and P. M. Narins. 2005. Anthropogenic sounds differentially affect amphibian call rate. *Biological Conservation* 121:419–427.

⁶ Patricelli, G., and J. J. L. Bickley. 2006. Avian communication in urban noise: causes and consequences of vocal adjustment. *Auk* 123:639–649.

⁷ Gillam, E. H., and G. F. McCracken. 2007. Variability in the echolocation of *Tadarida brasiliensis*: effects of geography and local acoustic environment. *Animal Behaviour* 74:277–286.

⁸ Slabbekoorn, H., and E. A. P. Ripmeester. 2008. Birdsong and anthropogenic noise: Implications and applications for conservation. *Molecular Ecology* 17:72–83.

⁹ Rabin, L. A., R. G. Coss, and D. H. Owings. 2006. The effects of wind turbines on antipredator behavior in California ground squirrels (*Spermophilus beecheyi*). *Biological Conservation* 131:410–420.

¹⁰ Quinn, J. L., M. J. Whittingham, S. J. Butler, W. Cresswell, J. L. Quinn, M. J. Whittingham, S. J. Butler, W. Cresswell, and W. Noise. 2017. Noise, predation risk compensation and vigilance in the chaffinch *Fringilla coelebs*. *Journal of Avian Biology* 37:601–608.

¹¹ Francis, C. D., C. P. Ortega, and A. Cruz. 2009. Noise pollution changes avian communities and species interactions. *Current Biology* 19:1415–1419.

¹² Kight, C. R., and J. P. Swaddle. 2011. How and why environmental noise impacts animals: An integrative, mechanistic review. *Ecology Letters* 14:1052–1061.

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 navigation¹³. Many species use photoperiod cues for communication (e.g., bird song¹⁴), determining when to begin foraging¹⁵, behavioral thermoregulation¹⁶, and migration¹⁷. Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it⁸. The City of Indian Wells should include measures in the DEIR to ensure the following: eliminate all nonessential lighting throughout the Project area; avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active; lighting for Project activities is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>); the 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.

Sand-Dependent Covered Species

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 surface substrate on the Project site is composed mainly of wind-blown, fine-grained sand. This type of substrate has the potential to be occupied by several Covered Species under the CVMSHCP that are sand-dependent, including Palm Springs pocket mouse, 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. The City of Indian Wells should include measures in the DEIR to 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

¹³ 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.

¹⁴ Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130-139.

¹⁵ Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123-1127.

¹⁶ Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98-108.

¹⁷ Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191-198.

appropriate state and federal permits to handle special-status species shall carry out salvage activities.

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). Information can be submitted online or via completion of the CNDDDB field survey form 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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 NOP of a DEIR for the Indian Wells General Plan Update Project (SCH No. 2024071208) and recommends that the City of Indian Wells address CDFW's comments and concerns in the forthcoming DEIR. Questions regarding this letter or further coordination should be directed to Julia Charpek, Environmental Scientist, at Julia.Charpek@wildlife.ca.gov or 909.354.0937.

Sincerely,

DocuSigned by:



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