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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 23, 2024
Sent via email

Jon Berg
Community Development Director
City of Indian Wells
44950 Eldorado Drive
Indian Wells, CA 92210
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Indian Wells General Plan Update Project (PROJECT)
Draft Environmental Impact Report (DEIR)
SCH# 2024071208

Dear Jon Berg:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of Indian Wells (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: City of Indian Wells

Objective: The Project proposes the comprehensive General Plan Update (GPU). The GPU addresses land use, mobility, open space, conservation, safety, noise, and economic development. The GPU includes an update to the City's Land Use Map. While no specific development projects are proposed as part of the GPU, the General Plan will accommodate future growth in Indian Wells, including new businesses, expansion of existing businesses, and new residential uses. The buildout analysis utilizes a 20-year horizon, and 2045 is assumed to be the buildout year of the General Plan Update.

Among other actions, the Project proposes changing the current land use designation of a portion of the Whitewater River. A 6.82-acre portion of the Whitewater River, currently designated as part of the storm channel will be changed to the designation of developable acreage for resort commercial uses utilizing approved channel re-design. The proposed improvements will include engineered fill material and new slope protection on the southern slope of the channel in the vicinity of Miles Avenue.

Location: The Project, City of Indian Wells, occupies an area of roughly 15 square miles. Indian Wells is located in the Coachella Valley area of Riverside County, approximately 14 miles southeast of Palm Springs.

Timeframe: Project construction is anticipated through the assumed buildout of the City in 2045.

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 also concerned that the DEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW requests that additional information and analyses be added to a revised DEIR.

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. For example, though a desk review of biological resources (e.g., use of data from the California Natural Diversity Database [CNDDDB]) as carried out, no field assessments of biological resources was conducted. 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 policies and actions proposed in the DEIR in lieu of mitigation measures 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 biological resources and burrowing owl.

1) Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the

region, and that significant environmental impacts of the proposed project are adequately investigated and discussed.

Page 4.3-16 of the DEIR indicates that “the General Plan Update 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.” The DEIR indicates that channel modification will follow appropriate environmental review with relevant water resources agencies (page 4.4-2), and the Project will secure appropriate permits from CDFW (page 4.10-23). However, page 3-25 of the DEIR also indicates that the City will “utilize this PEIR as a basis in determining potential environmental effects and the appropriate level of environmental review”; therefore, it is important that the DEIR accurately describe and analyze impacts to biological resources associated with proposed activities to remove 6.82 acres from the Whitewater River and install slope protection.

Western burrowing owl (*Athene cunicularia hypugaea*: burrowing owl) is a candidate species for listing as threatened or endangered pursuant to the California Endangered Species Act (Fish & G. Code, §§ 2050 et seq., 2080, 2085). As a CESA candidate, burrowing owl receives the same protections as afforded to threatened or endangered species. Page 4.4-19 of the DEIR indicates that “the Whitewater River Channel is not a Conservation Area, nor have any sensitive species been found in the portion of the Channel in the Planning Area.” The DEIR only supports this conclusion with the results of a desk review of biological resources, e.g., use of species observation data from CNDDDB; the DEIR does not include or consider the results a field assessment of biological resources. CDFW clarifies that the banks of the Whitewater River contain suitable burrowing/nesting habitat for burrowing owl. As indicated in Section page 9-145 of the CVMSHCP, burrowing owls “occur in open desert areas, in fallow fields, along irrigation dikes and levees, wherever burrows (generally dug by ground squirrels) are available away from intense human activity.” Through review of various projects in Coachella Valley, CDFW has observed that burrowing owls are common in the Whitewater River and often use the banks for nesting and the entire Whitewater River for foraging. Further, the California Natural Diversity Database contains unprocessed data showing recent observations of burrowing owl within 2.5 miles to the east of the area where stream habitat is proposed for removal from the Whitewater River. CDFW recommends that the DEIR is revised to describe the potential for burrowing owl to be impacted by activities associated with disturbance to and the removal of areas from the Whitewater River. Additionally, the Whitewater River provides important foraging, refugia, nesting, and burrowing habitat for a variety of native wildlife species including bobcats (*Lynx rufus*), coyotes (*Canis latrans*), desert kit fox (*Vulpes macrotis*), reptiles, and resident and migratory birds. Cliff swallows (*Petrochelidon pyrrhonota*) and several species of bats (e.g., Yuma myotis (*Myotis yumanensis*) and

Mexican free-tailed bats (*Tadarida brasiliensis*) may use bridges for nest building and day/night roosting, respectively. The DEIR should include an accurate description of the biological resources that could be impacted for activities associated with the removal of sections of the Whitewater River.

Also, page 4.4-22 of the DEIR states that “the City does not act as a wildlife movement corridor due to the current built environment as well as the presence of urban/suburban development encompassing much of the City.” CDFW clarifies that the Whitewater River serves as an important wildlife movement corridor for a species such as bobcats, coyotes, desert kit fox, and other wildlife that have adapted to the urban-wildlife interface. The Whitewater River serves as a wildlife movement corridor between the urban areas, the surrounding mountains, the Salton Sea, and protected areas including the Coachella Valley Multiple Species Habitat Conservation Plan’s Coachella Valley Stormwater Channel and Delta Conservation Area. The Whitewater River and its plant communities are valuable biological resources that serve as important habitat for variety of wildlife, including burrowing owl. CDFW requests that the DEIR is revised to accurately describe the biological resources associated with the section of the Whitewater River that is proposed for a change in land use designation.

Given the DEIR’s lack of a field assessment when analyzing impacts to biological resources, and given the potential for burrowing owl to occupy the section of the Whitewater River proposed for a land-use designation change and removal, CDFW recommends the City include the following mitigation measures to reduce impacts to biological resources to less than significant:

Mitigation Measure BIO-[A]: Assessment of 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.

Mitigation Measure BIO-[B]: Burrowing Owl Habitat Assessment and Surveys

No less than 60 days prior to the start of Project-related activities, a burrowing owl habitat assessment shall be conducted by a qualified biologist according to the specifications of the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012 or most recent version).

If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites (occupied site means at least one burrowing owl has been observed within the last three years; may also be indicated by owl sign including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site), acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and 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 and the conservation status of adjacent or nearby suitable habitat, along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval. If Project activities, including burrow exclusion and closure, could result in take of burrowing owl, appropriate CESA authorization should be obtained prior to commencement of Project activities.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG, 2012 or most recent version). Preconstruction surveys should be 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.

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] and MM BIO-[B].

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

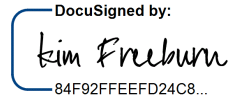
CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the DEIR does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. The CEQA Guidelines indicate that recirculation is required when a new significant impact is identified (§ 15088.5). CDFW recommends that a revised DEIR, including a complete description of the existing environmental setting, be recirculated for public comment. CDFW also recommends that the revised DEIR include an analysis of impacts to biological resources including, but not limited to, burrowing owl, as well as mitigation measures described in this letter

CDFW personnel are available for consultation regarding biological resources and strategies to avoid and minimize impacts. Questions regarding this letter or further

Jon Berg, Community Development Director
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coordination should be directed to Jacob Skaggs, Senior Environmental Scientist Specialist, at jacob.skaggs@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW
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Office of Planning and Research, State Clearinghouse, Sacramento
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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 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</p>	<p>Timing: Prior to Project construction activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Indian Wells and Project proponent</p> <p>Monitoring and Reporting: City of Indian Wells</p>

<p>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.</p>		
<p>Mitigation Measure BIO-[B]: Burrowing Owl Habitat Assessment and Surveys</p> <p>No less than 60 days prior to the start of Project-related activities, a burrowing owl habitat assessment shall be conducted by a qualified biologist according to the specifications of the <i>Staff Report on Burrowing Owl Mitigation</i> (Department of Fish and Game, March 2012 or most recent version).</p> <p>If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report on Burrowing Owl Mitigation</i> prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites (occupied site means at least one burrowing owl has been observed within the last three years; may also be indicated by owl sign including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site), acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and 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</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 Indian Wells and Project proponent</p> <p>Monitoring and Reporting: City of Indian Wells</p>

<p>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 and the conservation status of adjacent or nearby suitable habitat, along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval. If Project activities, including burrow exclusion and closure, could result in take of burrowing owl, appropriate CESA authorization should be obtained prior to commencement of Project activities.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (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>		
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