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GAVIN NEWSOM, Governor
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September 13, 2024
Sent via email

Patricia Villagomez
Principal Planner
City of Desert Hot Springs
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Pierson Commercial Specific Plan Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2024080608

Dear Patricia Villagomez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability and Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Desert Hot Springs (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

[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.

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: Beyond Food Mart, Inc.

Objective: The Project proposes the construction and operation of a 9-island fueling station, a 7,460-square-foot convenience store with a drive-thru for pre-packed food pick-up, a 1,790-square-foot drive-thru carwash, a 2,000-square-foot quick service restaurant. The Project will have 61,941 square feet of perimeter and internal landscaping and will include artificial nighttime lighting for security and safety purposes. The Project will include 83 car parking spaces and 8 electric vehicle parking spaces. Operation will be 24 hours per day, seven days per week.

Location: The Project site is an approximately 3.99-acre parcel (Assessor's Parcel No. 664-080-017) located at the northwest corner of Pierson Boulevard and North Indian Canyon Road in the City of Desert Hot Springs, County of Riverside, California.

Timeframe: Project construction is proposed to begin in 2024 and will take approximately 14 months.

COMMENTS AND RECOMMENDATIONS

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

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the MND does not adequately

identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information to facilitate a meaningful review by CDFW, including a complete and accurate assessment of biological resources on the Project site. CDFW requests that additional information and analyses be added to a revised MND, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

Existing Environmental Setting

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

The MND lacks a complete assessment of biological resources within the Project site and surrounding area specifically as it relates to an assessment of biological resources specifically for special-status plants, burrowing owl (*Athene cunicularia*), and desert kit fox (*Vulpes macrotis arsipus*). A complete and accurate assessment of the environmental setting and Project-related impacts to special status plants, burrowing owl, and desert kit fox 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 MND include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support the City in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for burrowing owl, desert tortoise (*Gopherus agassizii*), desert kit fox, American badger (*Taxidea taxus*), special-status plants, artificial nighttime lighting, and the CDFW Lake and Streambed Alteration Program, as well as revising the mitigation measure for nesting birds.

1) Assessment of Biological Resources

Regarding Little San Bernardino Mountains linanthus (*Linanthus maculatus* ssp. *maculatus*; California Rare Plan Rank (CRPR) 1B2; Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) Covered Species), page 38 of the Project's Biological Resources Assessment (Biological Assessment), dated July 2022 and updated June 2024, indicates that "suitable habitat for this species does not occur on

site. As such, this species is considered absent from the Project site." Data from the California Natural Diversity Database (CNDDB), accessed using CDFW's Biogeographic Information and Observation System (BIOS), includes a relatively recent (2001) observation of Little San Bernardino Mountains linanthus that overlaps with the Project site. Also, the Biological Assessment indicates that a general reconnaissance survey within the Project site was conducted on July 18, 2022, outside of the bloom period for Little San Bernardino Mountains linanthus. Similarly for Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*; CRPR 1B2; CVMSHCP Covered Species), the Biological Assessment (page 34) concluded that "suitable habitat for this species does not occur on site." However, the Project site contains CVMSHCP modeled habitat for this species, and the general reconnaissance survey was conducted outside of the typical bloom period for this species. For these reasons, CDFW is concerned about the accuracy of the conclusions in the MND that the Project site does not contain suitable habitat for Little San Bernardino Mountains linanthus, Coachella Valley milk vetch, and potentially other special-status plant species.

Using surveys implemented according to recommended protocols and conducted during the appropriate time(s) of the year is an important step in adequately disclosing potential impacts to special-status native plants and sensitive natural communities. CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities[2] provides the following guidance on timing and number of visits: "Conduct botanical field surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting. Space botanical field survey visits throughout the growing season to accurately determine what plants exist in the Project area. This usually involves multiple visits to the Project area (e.g., in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special status plants are present.[3] The timing and number of visits necessary to determine if special status plants are present is determined by geographic location, the natural communities present, and the weather patterns of the year(s) in which botanical field surveys are conducted." The findings of appropriate botanical field surveys for special-status native plants and sensitive natural communities are important in informing appropriate avoidance, minimization, and

[2] Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, California Department of Fish and Wildlife, March 20, 2018. Link: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline

[3] U.S. Fish and Wildlife Service Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants available at: https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/

mitigation measures and supporting the City in demonstrating that Project impacts are reduced to less than significant.

CDFW recommends that the City include in a revised MND the results of a recent and thorough floristic-based assessment of special-status plants and natural communities performed by a qualified biologist and following CDFW's Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018 or most recent version). Based on findings from a recent floristic-based assessment, CDFW recommends that the MND is revised to include an analysis of direct, indirect, and cumulative impacts to biological resources and identification of appropriate avoidance, minimization, and mitigation measures.

To support the City in reducing impacts to special-status plants to a level less than significant, CDFW recommends the following mitigation measure is added to a revised MND:

Mitigation Measure BIO-[A]: Special-Status Plants

Prior to Project construction activities, a thorough, recent, floristic-based assessment of special-status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see https://wildlife.ca.gov/Conservation/Plants) shall be performed by a qualified biologist. Should any state-listed plant species (excluding CVMSHCP Covered Species) be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should any species of native plants designated as rare, threatened, or endangered by state law (excluding CVMSHCP Covered Species) be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) in Attachment 1 for revised Mitigation Measure BIO-1, as well as CDFW-recommended Biological Resources Mitigation Measures A, B, C, D, E, F and G.

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.).

With regard to the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), per its associated Implementing Agreement and Permits from the Wildlife Agencies, Take associated with Covered Activities will not be in violation of the Migratory Bird Treaty Act and will be consistent with Fish and Game Code sections 3503 and 3503.5; therefore, Covered Activities within and outside Conservation Areas must undertake measures to avoid the take of individuals, nests, and eggs of nesting birds. General conservation measures for all bird species, per CVMSHCP Section 9.7, indicate that Permittees avoid impacts to Habitat during nesting season.

Page 25 of the MND states that the "Project Site and immediate surrounding area contain habitat suitable for nesting birds." The MND includes Mitigation Measure BIO-1 for nesting birds, which indicates that the "nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist will conduct pre-construction Nesting Bird Surveys (NBS) no more than 3 days prior to Project-related disturbance to nestable vegetation to identify any active nests." CDFW finds this measure 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., 2017[4]). 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.

[4] 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.

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.

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-1 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-1: Nesting Birds

Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. 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. ~~Nesting bird nesting season generally extends from February 1 through September 15 in southern California and specifically, March 15 through August 31 for migratory passerine birds. To avoid impacts to nesting birds (common and special status) during the nesting season, a qualified Avian Biologist will conduct pre-construction Nesting Bird Surveys (NBS) no more than 3 days prior to Project-related disturbance to nestable vegetation to identify any active nests. If no active nests are found, no further action will be required. If an active nest is found, the biologist will set appropriate no-work buffers around the nest which will be based upon the nesting species, its sensitivity to disturbance, nesting stage, and expected types, intensity, and duration of the disturbance. The nests and buffer zones shall be field-checked weekly by a qualified biological monitor. The approved no-work buffer zone shall be clearly marked in the field, within which no disturbance activity shall commence until the qualified biologist has determined the young birds have successfully fledged and the nest is inactive.~~

3) Burrowing Owl

Western burrowing owl is a California Species of Special Concern. It is unlawful to take, possess, or destroy any birds in the order Strigiformes, including western burrowing owls, except as otherwise provided in the Fish and Game Code and related regulations. (Fish & G. Code, § 3503.5.) It is also unlawful to take, possess, or destroy western burrowing owl nests or eggs, except as otherwise provided in the Fish and Game Code and related regulations. (Fish & G. Code, §§ 3503, 3503.5.) State law also explicitly incorporates the prohibitions on take and possession set forth in the federal Migratory Bird Treaty Act. (Fish & G. Code, § 3513.)

With regard to the CVMSHCP, the CDFW Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 does not provide Take Authorization for burrowing owl individuals, nests, or eggs. To the contrary, section 3.5.6 of the NCCP Permit states burrowing owl "pairs or individuals will not be Taken" and reiterates that the "HCP/NCCP does not authorize Take of [burrowing owl] nests [or] eggs[.]" Therefore, throughout the CVMSHCP area—both within and without Conservation Areas—Permittees must ensure that activities occurring within their jurisdictions do not result in the take, possession, or destruction of burrowing owl individuals, nests, or eggs. Any activity occurring within the CVMSHCP area 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.

Page 25 of the MND indicates that "the Project Site does not contain suitable habitat for this species. No burrowing owls were observed during the site visit. No burrows of any kind were located within the Project Site. No portion of the Project Site showed any evidence of past or present BUOW activity. No feathers, whitewash, or castings were found and no suitable burrow surrogate species are present on-site. Therefore, no suitable habitat exists on-site and no focused surveys are required." The Biological Assessment indicates that a general reconnaissance survey within the Project site was conducted on July 18, 2022. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. The MND and its supporting documents do not indicate if a habitat assessment or focused surveys for burrowing owl, conducted independently of surveys for other species, were completed. Given the MND's lack of findings from a recent habitat assessment and focused surveys for burrowing owl following the guidelines in the `*Staff Report on Burrowing Owl Mitigation,*[5] the number of

[5] 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

suitable and occupied burrows within the Project site and surrounding areas is unknown.

CDFW is also concerned with the MND's conclusion that the Project site does not contain suitable habitat for burrowing owl. CDFW notes that in California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs,[6] and that burrowing owls may occur in ruderal grassy fields, vacant lots, and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat proximity.[7] The Project's biological assessment indicates that the "habitat on-site consists of a mix of *Larrea tridentata - Ambrosia dumosa* Shrubland Alliance (Creosote bush – white bursage scrub) and bare ground." Based on review of historical aerial imagery using Google Earth and photos included in the Biological Assessment, the Project site and surrounding areas to the west, east, and north contain habitat with sparse cover of native vegetation that is suitable nesting and foraging habitat for burrowing owl. The California Natural Diversity Database includes an observation of burrowing owl approximately 0.5 miles to the northwest of the Project site in areas with similar habitat to the Project site. In addition, burrowing owls frequently move into disturbed areas prior to and during construction activities since they are adapted to highly modified habitats.[8,9] The Project site contains suitable habitat for burrowing owl, and given the lack of recent surveys for burrowing owl, the status of burrowing owl presence within and surrounding the Project site is unknown. Further, CDFW staff, through their environmental review and permitting work, have observed in Desert Hot Springs one of the highest concentrations of burrowing owl in the Coachella Valley. CDFW is concerned that the Project has the potential to impact burrowing owl, yet the MND lacks appropriate analysis on presence of the species within the Project site and surrounding area and appropriate avoidance, minimization, and mitigation measures.

CDFW recommends the MND is revised to include the findings, including survey methods and survey reports, from recent 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,

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

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

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

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

and mitigation measures to support the City and Project proponent in reducing impacts to burrowing owls to a level less than significant.

To support the City in reducing impacts to burrowing owl to a level less than significant, CDFW recommends the City add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[B]: 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 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.

4) Desert Tortoise

Page 9 of the Project's Biological Assessment indicates that "no suitable habitat for desert tortoises exists within the Project site. There are documented desert tortoise occurrences within 5 miles the Project site. However, these occurrences are within suitable habitat This species are not expected to occur within the Project area. Additionally, the Project site is outside of the Designated Critical Habitat for this species. Therefore, no potential direct or indirect impacts on desert tortoise can be identified, and presence/absence surveys for this species are not warranted or recommended."

The Project site contains CVMSHCP modeled habitat for desert tortoise. Desert tortoises can occupy a range of habitat types, and the CVMSHCP Section 9.6.1.5 indicates that desert tortoises "are found naturally along the northern, eastern, and western rim of the Coachella Valley in the foothills of the Little San Bernardino Mountains." Unprocessed data in the California Natural Diversity Database indicates an observation of desert tortoise from 2023 within 2.2 miles of the Project site within similar habitat to the northwest. CDFW considers the Project site to contain suitable habitat for desert tortoise; however, the MND lacks measures to avoid, minimize, and mitigate for impacts to desert tortoise. Per the CVMSHCP section 9.5.1.4 "both inside and outside Conservation Areas, avoidance, minimization, and mitigation measures require relocation of individual tortoises if required surveys locate individuals on the site of Covered Activities. For more information about avoidance, minimization, and mitigation measures see Section 4.4."

To support the City in reducing impacts to desert tortoise to a level less than significant, CDFW recommends the City add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[C]: Desert Tortoise Surveys

Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise (USFWS 2019; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys. If desert tortoise is found to be present, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

No more than 14 calendar days prior to start of Project activities and after any pause in Project activities lasting 30 days or more, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS 2019 desert tortoise survey methodology (Preparing for Any Action that May

Occur within the Range of the Mojave Desert Tortoise; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). Pre-construction surveys shall be completed using perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign within the Project area and 50-foot buffer zone. Pre-activity surveys cannot be combined with other surveys conducted for other species while using the same personnel. Results of the surveys shall be submitted to CDFW prior to construction start. If the pre-construction surveys confirm desert tortoise absence, the qualified biologist shall ensure desert tortoise do not enter the Project area. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

5) Desert Kit Fox

Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, §460) and may not be taken at any time. The MND lacks a discussion and analysis of potential impacts to desert kit fox. The Project site is located within predicted habitat for desert kit fox, as indicated in the Kit Fox Predicted Habitat dataset (CWHR M148 [ds2599]) accessed using CDFW's BIOS.

Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found on-site during breeding season, it could delay Project activities until appropriate vegetation and construction buffers can be established on the Project site.

Desert kit fixes also have the potential to move onto the Project site between the time that the general reconnaissance survey was conducted on July 18, 2022, and start of Project construction activities. Due to the Project being located within predicted habitat for desert kit fox, the lack of information on if and how surveys were conducted for the species, and the potential for this species to move on to the Project site prior to and during construction activities, CDFW considers the Project as having the potential to impact desert kit fox.

To support the City in reducing impacts to desert kit fox to a level less than significant, CDFW recommends the MND is revised to include an analysis of impacts to desert kit fox, including the findings from focused surveys for desert kit fox, and to incorporate appropriate avoidance, minimization, and mitigation measures based on findings from surveys. CDFW also recommends the following mitigation measure is added to a revised and recirculated MND:

Mitigation Measure BIO-[D]: Desert Kit Fox

Preconstruction surveys for desert kit fox shall be conducted within 14 days prior to the start of construction. The survey area shall include the Project disturbance areas plus a 500-foot buffer during the breeding season (January 15 through August 31 or until pups are foraging on their own) and a 250-foot buffer outside the breeding season. Pre-construction surveys should include 100-percent visual coverage of the Project area and buffers. Potentially occupied burrows in Project disturbance areas and the survey buffer shall be mapped, and Qualified Biologist(s) shall utilize daily on-site monitoring, tracking stations, and wildlife cameras to determine whether the burrows are occupied. If a burrow is determined to be occupied by desert kit fox during the breeding season, the burrow shall be demarcated with a 500-foot buffer. If a burrow is determined to be occupied outside the breeding season it shall be demarcated with a 250-foot buffer. Burrows determined to be unoccupied shall be demarcated with a 50-foot buffer. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.

6) American badger

American badger is a California Species of Special Concern. Regarding American badger, page 43 of the Project's Biological Assessment indicates that "suitable habitat for this species does not occur on site. As such, this species is considered absent from the Project site." CDFW is concerned about the accuracy of the conclusion that site does not contain suitable habitat for American badger because the Project site is located within predicted habitat for American badger, as indicted in the American Badger Predicted Habitat dataset (CWHR M160 [ds2611]) accessed using CDFW's BIOS. Also, the MND and supporting documents lack a discussion on if and how surveys specifically for American badger were conducted.

American badgers also have the potential to move onto the Project site between the time that the general reconnaissance survey was conducted on July 18, 2022, and start of Project construction activities. Due to the Project being located within predicted habitat for American badger, the lack of information on if and how surveys were conducted for American badger, and the potential for American badger to move on to the Project site prior to and during construction activities, CDFW considers the Project as having the potential to impact American badger.

To support the City in reducing impacts to American badger to a level less than significant, CDFW recommend the following mitigation measure is added to a revised MND:

Mitigation Measure BIO-[E]: American Badger

No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a Qualified Biologist(s) shall conduct surveys to

determine if potential American badger burrows are present in the Project area. If American badger burrows are located, the City of Desert Hot Springs and Project sponsor shall have a Qualified Biologist(s) monitor the burrows using observation and tracking material and/or trail cameras over a three (3) day period to determine the status of the burrow. If non-natal active dens can be avoided and buffered from Project activities, the biologist shall flag a minimum 100-foot disturbance-free buffer zone. A minimum 500-foot disturbance-free buffer shall be placed around the natal den and maintained until juvenile independence is determined by the biologist. The biologist shall block inactive dens within the work area or buffer zone that will not be directly impacted by Project activities with rocks and sticks to discourage use. The biologist shall periodically check and ensure the inactive burrows remain blocked and are not occupied. The biologist shall remove the obstructions when Project activities are complete. The biologist has the authority to halt or stop work if individuals exhibit signs of disturbance. Established buffers shall remain until the biologist determines the young have dispersed or the den is no longer active, or until Project activities cease. If American badger is proposed to be relocated from an active den or an active den will be impacted, an exclusion plan shall be prepared for CDFW review and approval that will be performed outside of breeding season and after juvenile dispersal.

7) Artificial Nighttime Lighting

Page 14 of the MND indicates “lighting would be used on the Project Site to illuminate driveways, pathways, and parking areas for safety and security purposes. The Proposed Project’s photometric plan will be submitted under a separate permit Application and will be required to comply with §17.40.170 of the Municipal Code. Per the City’s requirements, lighting must be fully or partially shielded in order to prevent glare and light spread beyond the site boundaries. Therefore, the Proposed Project would not generate a significant amount of light and glare when compared to the surrounding area. Less than significant impacts are identified or anticipated, and no mitigation measures are required.” The MND lacks additional information on artificial nighttime lighting. The Project includes operation 24 hours per day, seven days per week and is located adjacent to open-space areas on all sides—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.[10] Many species use photoperiod cues for communication (e.g., bird song[11]), determining when to begin foraging,[12] behavioral thermoregulation,[13] and migration.[14] Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.[15]

While plans for shielding artificial nighttime lighting support the Project in limiting lighting impacts to biological resources within areas surrounding the Project site, CDFW considers these minimization 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 MND:

Mitigation Measure BIO-[F]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the City of Desert Hot Springs 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 Desert Hot Springs 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 Desert Hot Springs 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.

8) CDFW 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

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[10] 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.
[11] Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139.
[12] Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. Current Biology 19:1123–1127.
[13] Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. Ecology 58:98–108.
[14] Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. Frontiers in Ecology and the Environment 2:191–198.

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 26 of the MND indicates that the “Project Site was surveyed with 100 percent visual coverage and no drainage features were present on-site that met the definition for WOUS. As such, the Project Site does not contain any wetlands, WOUS, or Waters of the State. The CDFW asserts jurisdiction over any drainage feature that contains a definable bed and bank or associated riparian vegetation. The Project Site was surveyed with 100 percent visual coverage and no definable bed or bank features exist on the Project Site. As such, the Project Site does not contain any areas under CDFW jurisdiction.” Based on review of historical aerial imagery using Google Earth, at least one ephemeral stream crosses the Project site moving from the northwest to southeast corners of the site. Evidence of erosion, scour, and stream-aligned vegetation is visible in aerial imagery over multiple years.

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 MND:

Mitigation Measure BIO-[G]: 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.

9) Landscaping

Page 50 the MND states that the “proposed Project includes approximately 61,941 square-feet of irrigated landscaping.” The Project’s Landscape Plan in Figure 4 of the MND indicates that landscaping will comprise a mix of predominantly non-native shrubs and trees among cobble stone or decomposed granite. CDFW recommends that the MND include recommendations regarding landscaping from Section 4.0 of the CVMSHCP “Table 4-112: Coachella Valley Native Plants Recommended for Landscaping” (pp. 4-180 to 4-182; https://cvmshcp.org/plan-documents/). CDFW also 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/.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information for a meaningful review of impacts to biological resources. CDFW recommends that a revised MND, including a complete assessment of biological resources (assessment of special-status plants, burrowing owl, and desert kit fox) be recirculated for public comment. The CEQA Guidelines indicate that recirculation is required when a new significant effect is identified and additional mitigation measures

are necessary (§ 15073.5(b)(1)). CDFW also recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised MND.

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

Sincerely,

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...

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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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	**Timing and Methods**	**Responsible Parties**
Mitigation Measure BIO-1: Nesting Birds **Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. 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**	**Timing**: No more than 3 days prior to vegetation removal or ground-disturbing activities. **Methods:** See Mitigation Measure	**Implementation**: City of Desert Hot Springs and Project proponent **Monitoring and Reporting**: City of Desert Hot Springs

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.		
Mitigation Measure BIO-[A]: Special-Status Plants **Prior to Project construction activities, a thorough, recent, floristic-based assessment of special-status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see https://wildlife.ca.gov/Conservation/Plants) shall be performed by a qualified biologist. Should any state-listed plant species (excluding CVMSHCP Covered Species) be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should any species of native plants designated as rare, threatened, or endangered by state law (excluding CVMSHCP Covered Species) be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.**	**Timing**: Prior to Project construction activities **Methods:** See Mitigation Measure	**Implementation**: City of Desert Hot Springs and Project proponent **Monitoring and Reporting**: City of Desert Hot Springs
Mitigation Measure BIO-[B]: 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**	**Timing: Focused surveys:** Prior to vegetation removal or ground-disturbing activities. **Pre-construction**	**Implementation**: City of Desert Hot Springs and Project proponent

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. **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.**	**surveys:** No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance. **Methods:** See Mitigation Measure	**Monitoring and Reporting**: City of Desert Hot Springs
Mitigation Measure BIO-[C]: Desert Tortoise Surveys **Prior to commencing Project activities, a focused survey for desert tortoise shall be conducted by a**	**Timing**: Focused surveys: prior to commencing Project activities;	**Implementation**: City of Desert Hot Springs and Project proponent

qualified biologist, according to protocols in Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise (USFWS 2019; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys. If desert tortoise is found to be present, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures. **No more than 14 calendar days prior to start of Project activities and after any pause in Project activities lasting 30 days or more, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS 2019 desert tortoise survey methodology (Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). Pre-construction surveys shall be completed using perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign within the Project area and 50-foot buffer zone. Pre-activity surveys cannot be combined with other surveys conducted for other species while using the same personnel. Results of the surveys shall be submitted to CDFW prior to construction start. If the pre-construction surveys confirm desert tortoise absence, the qualified biologist shall ensure desert tortoise do not enter the Project area. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.**	Pre-construction surveys: No more than 14 calendar days prior to start of Project activities and after any pause in Project activities lasting 30 days or more **Methods:** See Mitigation Measure	**Monitoring and Reporting**: City of Desert Hot Springs
Mitigation Measure BIO-[D]: Desert Kit Fox **Preconstruction surveys for desert kit fox shall be conducted within 14 days prior to the start of construction. The survey area shall include the Project disturbance areas plus a 500-foot buffer during the breeding season (January 15 through**	**Timing**: Preconstruction surveys: within 14 days prior to the start of construction	**Implementation**: City of Desert Hot Springs and Project proponent

August 31 or until pups are foraging on their own) and a 250-foot buffer outside the breeding season. Pre-construction surveys should include 100-percent visual coverage of the Project area and buffers. Potentially occupied burrows in Project disturbance areas and the survey buffer shall be mapped, and Qualified Biologist(s) shall utilize daily on-site monitoring, tracking stations, and wildlife cameras to determine whether the burrows are occupied. If a burrow is determined to be occupied by desert kit fox during the breeding season, the burrow shall be demarcated with a 500-foot buffer. If a burrow is determined to be occupied outside the breeding season it shall be demarcated with a 250-foot buffer. Burrows determined to be unoccupied shall be demarcated with a 50-foot buffer. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.	**Methods:** See Mitigation Measure	**Monitoring and Reporting**: City of Desert Hot Springs
Mitigation Measure BIO-[E]: American Badger **No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a Qualified Biologist(s) shall conduct surveys to determine if potential American badger burrows are present in the Project area. If American badger burrows are located, the City of Desert Hot Springs and Project sponsor shall have a Qualified Biologist(s) monitor the burrows using observation and tracking material and/or trail cameras over a three (3) day period to determine the status of the burrow. If non-natal active dens can be avoided and buffered from Project activities, the biologist shall flag a minimum 100-foot disturbance-free buffer zone. A minimum 500-foot disturbance-free buffer shall be placed around the natal den and maintained until juvenile independence is determined by the biologist. The biologist shall block inactive dens within the work area or buffer zone that will not be directly impacted by Project activities with rocks and sticks to discourage use. The biologist shall periodically check and ensure the inactive burrows remain blocked and are not occupied. The biologist shall remove the obstructions when Project activities are complete. The biologist has the authority to halt or stop work if individuals exhibit signs of disturbance. Established buffers shall remain until the biologist determines the young have dispersed or the den is no longer active, or until Project activities cease. If American badger is proposed to be relocated from an**	**Timing**: No more than 30 days prior to the beginning of ground disturbance and/or construction activities **Methods:** See Mitigation Measure	**Implementation**: City of Desert Hot Springs and Project proponent **Monitoring and Reporting**: City of Desert Hot Springs

active den or an active den will be impacted, an exclusion plan shall be prepared for CDFW review and approval that will be performed outside of breeding season and after juvenile dispersal.		
Mitigation Measure BIO-[F]: Artificial Nighttime Lighting **Throughout construction and the lifetime operations of the Project, the City of Desert Hot Springs 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 Desert Hot Springs 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 Desert Hot Springs 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.**	**Timing**: Throughout construction and the lifetime operations of the Project. **Methods:** See Mitigation Measure	**Implementation**: City of Desert Hot Springs and Project proponent **Monitoring and Reporting**: City of Desert Hot Springs
Mitigation Measure BIO-[G]: 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.**	**Timing**: Prior to construction. **Methods:** See Mitigation Measure	**Implementation**: City of Desert Hot Springs and Project proponent **Monitoring and Reporting**: City of Desert Hot Springs