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GAVIN NEWSOM, Governor  
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April 17, 2025  
*Sent via email*

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CUP 25-3, DP 25-4, ENV 25-1, Park Lane Homes Project (PROJECT)  
Mitigated Negative Declaration (MND)  
SCH# 2025031169

Dear Patricia Villagomez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration from the City of Desert Hot Springs (City) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup>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:** Park Lane Homes LLC

**Objective:** The Project proposes constructing a 7.54-acre housing apartment complex and early childhood education center in the City of Desert Hot Springs. The apartment complex will include one-, two-, and three-story buildings, a community center, and a community swimming pool. Each residential building will include a recreational landscaped courtyard and a ground floor laundry facility. A total of 167 apartments will be available in either one-, two-, or three-bedroom options and there will be 222 parking spaces. The complex will also include an early childhood education center with 10 parking spaces. The Project would construct a detention basin to capture onsite nuisance flows. The Project proposes artificial nighttime lighting including outdoor security lighting, landscape lighting, and pathway lighting. The Project also proposes drought-tolerant landscaping.

**Location:** The Project is located on 13.16 acres on the northeast corner of Palm Drive and Park Lane in the City of Desert Hot Springs, Riverside County, California, 92240. The Project is located within Accessor's Parcel Number 656-040-061.

**Timeframe:** The MND does not indicate a timeline to start construction but indicates that the Project will be operating in 2027.

## **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 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 a level 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 and appropriate assessment of biological resources within the Project site and surrounding area specifically as it relates burrowing owl (*Athene cunicularia*) and the Lake and Streambed Alteration Program. A complete and accurate assessment of the environmental setting and Project-related impacts to biological resources 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 an 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 revising the mitigation measures for nesting birds and burrowing owl and adding a mitigation measures for CDFW's Lake and Streambed Alteration Program, artificial nighttime lighting, and the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

#### **1) 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 CVMSHCP, per its associated Implementing Agreement and Permits from CDFW and the U.S. Fish and Wildlife Service (USFWS), 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, all Covered Activities within and outside Conservation Areas must undertake measures to avoid the take of individuals, nests, and eggs of nesting birds. The CVMSHCP includes a general conservation measure to avoid impacts to habitat for nesting birds during the nesting season for all bird species (CVMSHCP Section 9.7).

The Project site contains suitable habitat for ground-nesting birds and birds that may nest in the site's sparse cover of shrubs, vegetation cover that is re-establishing following grading and vegetation removal from the site between 2019 and 2021. The MND includes mitigation measure BIO-1, which indicates that the "bird nesting season for resident birds in Southern California occurs between January 15 and August 31. To avoid impacts to resident and migratory nesting birds, all vegetation clearing, ground disturbance, and construction activity should be scheduled between September 16 and January 31 if possible. If construction occurs during the nesting season, a certified avian biologist must conduct a pre-construction nesting bird survey (NBS) immediately prior to scheduled construction activity". Conducting work outside the peak nesting season is an important avoidance and minimization measure to comply with Fish and Game Code section 3503 and 3503.5 and a general conservation measure under the CVMSHCP. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds and their nests and eggs 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<sup>2</sup>). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

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<sup>2</sup> 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.

Also, Mitigation Measure BIO-1 states that “per CDFW recommendations, a buffer of 500 feet shall be set for listed species and birds of prey, and a buffer of 100 to 300 feet shall be set for unlisted songbirds.” CDFW recommends larger buffers (see revised Mitigation Measure BIO-1 below) to avoid the take of the nests and eggs of nesting birds. CDFW considers Mitigation Measure BIO-1 to be inadequate in scope and timing to reduce impacts to nesting birds to a level less than significant.

To support City in reducing impacts to nesting birds to a level less than significant level, 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**

**The peak** bird nesting season for resident birds in Southern California occurs between February 1 ~~January 15~~ and **September 15** ~~August 31~~. To avoid impacts to resident and migratory nesting birds, all vegetation clearing, ground disturbance, and construction activity should be scheduled **outside of the peak bird nesting season** ~~between September 16 and January 31~~ if possible. **Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to all vegetation removal or ground-disturbing activities throughout all portions of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.** ~~If construction occurs during the nesting season, a certified avian biologist must conduct a pre-construction nesting bird survey (NBS) immediately prior to scheduled construction activity. If active nests be identified, the biologist will demarcate a no-work buffer zone(s) around the active nest(s) and check the nest site(s) weekly until the young birds fledge and the nest(s) become inactive. The buffer zone size would be based on the nesting species, its sensitivity to disturbance, nesting stage and the expected intensity and duration of disturbance. No ground or vegetation disturbance shall occur within the nest site buffer zone(s) until the qualified biologist determines that the young have successfully fledged, and the nest is inactive. Per CDFW recommendations, a buffer of 500 feet shall be set for listed~~

~~species and birds of prey, and a buffer of 100 to 300 feet shall be set for unlisted songbirds.~~

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) in Attachment 1 for recommended revisions to MM BIO-1 and MM BIO-2 and CDFW-recommended MM BIO-[A], MM BIO-[B], and MM BIO-[C].

## **2) *Burrowing Owl***

On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under the California Endangered Species Act (Fish & G. Code, § 2050 et seq.). During the candidacy period, western burrowing owl will be afforded the same protection as threatened and endangered species under CESA. If Project activities, including relocation, could result in take, appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities.

Take of individual burrowing owls and their nests or eggs is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

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.

As discussed in the Project's Habitat Suitability Assessment & CVMSHCP Consistency Report, dated September 13, 2024 (Biological Assessment), the Project site and surrounding area contain suitable and occupied nesting and foraging habitat for burrowing owl. Page 25 of the Biological Assessment indicates that "a minimum of at least 10 individual burrowing owls, consisting of at least two adult pairs occupying different burrows at different parts of the site were present at the time of the assessment." Regarding survey methods for burrowing owl, the Biological Assessment indicates that a single "field assessment was conducted between the hours of 0645 and 0845 on 06 August 2024 by WSP biologist Melanie Bukovac and senior biologist Michael Wilcox. On-site suitable habitat was assessed based on the presence of constituent habitat elements (e.g., soils, vegetation, and topography) characteristic of the potentially occurring special status biological resources determined by the literature review. The entire site and adjacent properties (where accessible) were assessed on foot to record pertinent field data and current site conditions. Adjacent undeveloped areas within an approximate 150-meter (~500-foot) buffer zone were also assessed visually, from the project site, for burrowing owl (*Athene cunicularia*)." The MND and Biological Assessment lack additional information on the methods used to conduct a survey for burrowing owl, if specific protocols were followed, and if a survey for burrowing owl was conducted independent of surveys for other species. The MND and Biological Assessment also lack a map showing the locations of all burrowing owls, potential burrows, occupied burrows, descriptions of the behavior of burrowing owls and their ages and any dependencies on adults, and other details recommended in Appendix D of the *Staff Report on Burrowing Owl Mitigation*<sup>3</sup> under Survey Reports. Also, the MND and Biological Assessment only include the results of surveys conducted over a single site visit; to appropriately assess occupancy of a site by burrowing owl, the *Staff Report on Burrowing Owl Mitigation* recommends at least four survey visits for breeding season surveys (including at least one visit between February 15 and April 15 and a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15). If conducting non-breeding season surveys, follow the methods for breeding season surveys in Appendix D of the *Staff Report on Burrowing Owl Mitigation*, but conduct at least four visits, spread evenly, throughout the non-breeding season. Given the MND's lack of findings from focused surveys for burrowing owl following the guidelines in the *Staff Report on Burrowing Owl Mitigation*, the number and locations of all suitable and occupied burrows within the Project site and surrounding areas are unknown and may be greater than those reported in the Biological Assessment. Given the lack of results from focused surveys following recommended protocols and the lack of survey reports, CDFW is limited in its ability to provide biological expertise to support the City in reducing impacts to

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<sup>3</sup> 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>

burrowing owl to a level less than significant. CDFW recommends that the MND is revised to include the results of focused surveys, including survey reports, for burrowing owl within the Project site and surrounding area following the guidelines outlined in Appendix D of the *Staff Report on Burrowing Owl Mitigation*; and to incorporate appropriate avoidance, minimization, and mitigation measures for burrowing owl.

The MND includes Mitigation Measure BIO-2, which indicates that “all burrowing owls must be either avoided or relocated prior to any ground disturbance or plant removal. The Project is required to adhere to the protocols and schedule described in the “Western Burrowing Owl Avoidance and Relocation Plan for Park Lane Homes Assessor’s Parcel Number 656-040-061 (Plan).” This burrowing owl relocation plan was not developed in coordination with CDFW and USFWS and is therefore not compliant with requirements of the CVMSHCP. Section 8.5.2 of the CVMSHCP specifies that for all Covered Activities, relocation of burrowing owls requires implementation consistent with CVMSHCP Section 4.4, including relocation following protocols that are accepted by the Wildlife Agencies and determination of relocation methods through appropriate coordination with the Wildlife Agencies. Therefore, if burrowing owl relocation (i.e., eviction/passive relocation or active relocation) is proposed, a burrowing owl relocation plan needs to be developed and submitted to the Wildlife Agencies for review and approval prior to implementation.

The MND indicates that burrowing owl relocation is proposed for the Project. Burrowing owl relocation is considered a potentially significant impact under CEQA and should only be considered as a last resort, after all other options have been evaluated. Burrowing owl relocation (i.e., eviction/passive and active relocation) can result in take of burrowing owl individuals, nests, and eggs, which is not authorized under the CVMSHCP. Consultation with CDFW is warranted to determine if an Incidental Take Permit is necessary to avoid a violation of Fish and Game code section 2080.

CDFW considers Mitigation Measure BIO-2 to be inadequate in scope and timing to reduce impacts to burrowing owl to a level less than significant. CDFW recommends that the City revise Mitigation Measure BIO-2 with the following additions in **bold** and removals in ~~strikethrough~~:

#### **Mitigation Measure BIO-2: Burrowing Owl Focused and Pre-Construction Surveys**

**Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a CVMSHCP-approved Acceptable Biologist in accordance with the *Staff Report on Burrowing Owl Mitigation (2012 or most recent version)* prior to vegetation removal or ground-disturbing activities for all phases of Project construction. 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 Avoidance and Monitoring Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing**



Owl Plan shall describe proposed avoidance and monitoring actions, including measures necessary to avoid take of burrowing owl individuals, nests, and eggs. The Burrowing Owl Plan shall include the number and location of occupied burrow sites (occupied site means at least one burrowing owl or its sign has been observed within the last three years; may 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(s) or burrowing owl individuals, nests, or eggs cannot be avoided, appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081) should be obtained from CDFW 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* (2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys should be performed by a CVMSHCP-approved Acceptable 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 Avoidance and Monitoring Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities. ~~The western burrowing owl are protected under the MBTA, by the US Fish and Wildlife Service as a Bird of Conservation Concern (BCC) and designated as a candidate species by the CFGC. All burrowing owls must be either avoided or relocated prior to any ground disturbance or plant removal. The Project is required to adhere to the protocols and schedule described in the "Western Burrowing Owl Avoidance and Relocation Plan for Park Lane Homes Assessor's Parcel Number 656-040-061 (Plan)" written by WSP USA Environment and Infrastructure, Inc., and appended to this Initial Study as Appendix C. The Plan provides details to ensure that construction activities would not significantly impact the resident burrowing owl. Such activities include, but are not limited to the following actions:~~

- ~~• Scheduling ground disturbance and site preparation outside of nesting season.~~
- ~~• Conducting pre-construction site surveys with biologists approved by the Coachella Valley Conservation Commission.~~
- ~~• Mapping the locations of the burrows; documenting all signs of existing burrowing owls on the Project site.~~

- ~~Locating suitable burrows off-site.~~
- ~~Installation of artificial burrows off-site as needed.~~
- ~~No disturbance buffer zones around burrows on-site~~

~~The Plan adheres to the CDFG 2012 Staff Report on Burrowing Owl Mitigation~~

### **3) *Lake and Streambed Alteration Program***

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

Page 82 of the MND states that within the Project site, "stormwater currently flows from the northeast toward the southeast. The Von's shopping center to the north is responsible for retaining 100-year storm flows, and any overflow passed to the Project site will be the result of emergency flood conditions [...] Emergency overflow from this off-site basin will be directed southerly along the Project's onsite driveways towards Park Lane." The MND lacks additional details on how stormflows will be directed from the off-site basin to the Project's onsite driveways. Without these details on how stormflows will be directed through the Project site, CDFW is unable to provide appropriate biological expertise to support the City in reducing impacts to biological resources to a level less than significant. CDFW recommends the MND is revised to include additional details on the infrastructure that will be used to direct stormflows from the off-site basin to the Project's onsite driveways.

Page 43 of the MND indicates that "there are no riparian habitats, protected wetlands, marshes, vernal pools, or other sensitive communities that are protected by US fish and Wildlife Service or the California Department of Fish and Wildlife occurring on the Project site." Based on review of historical aerial imagery using Google Earth, overflow from the retention basin to the north results in stormflows entering the Project site and moving along its eastern edge. Indicators of stream habitat within the Project site include evidence of erosion and scour that are visible in aerial imagery in 2024, 2019, 2016, 2013, and other years. Because the Project proponent proposes diverting stormflows from the off-site basin to onsite driveways, CDFW recommends the Project proponent submit a notification of streambed alteration.

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-[A]: CDFW Lake and Streambed Alteration Program**

**Prior to construction and issuance of any grading permit, the Project proponent 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.**

***4) Coachella Valley Multiple Species Habitat Conservation Plan***

Local Development Mitigation Fee

The Project is located within the CVMSHCP Plan Boundary and outside of a Conservation Area. Page 44 of the MND states that the City “is a signatory to the CVMSHCP and therefore the Project is subject to the payment of a Development Mitigation Fee.” To document the City’s obligation as a Local Permittee under the CVMSHCP to impose a local development mitigation fee for this Project, CDFW recommends the City add the following mitigation measure to a revised MND:

**Mitigation Measure BIO-[B]: CVMSHCP Compliance**

**Prior to construction and issuance of any grading permit, the City shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee and transfer of revenues to the Coachella Valley Conservation Commission.**

***5) Artificial Nighttime Lighting***

The Project site is located adjacent to vacant areas to the west and north, including retention basins and other areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, and other nocturnal and crepuscular wildlife. The Project proposes “nighttime light from outdoor security lighting, landscape and pathway lighting” (page 23 of the MND). The Project’s proposed artificial nighttime lighting has the potential to significantly and adversely affect wildlife in these vacant, vegetated 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.<sup>4</sup> Many species use photoperiod cues for communication (e.g., bird song<sup>5</sup>), determining when to begin foraging,<sup>6</sup> behavioral thermoregulation,<sup>7</sup> and migration.<sup>8</sup> Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.<sup>10</sup>

Page 24 of the MND indicates that the Project “would adhere to the City’s lighting design requirements, which require shielding and downward orientation of fixtures, and would not produce light and glare upward into the sky or onto adjacent properties.” CDFW considers these plans to minimize the impacts of artificial nighttime lighting to be insufficient in scope to reduce the impacts of lighting to 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-[C]: Artificial Nighttime Lighting**

**Throughout construction and the lifetime operations of the Project, the City 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 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 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.**

### **6) Landscaping**

Page 23 of the MND indicates that the Project will incorporate “drought-tolerant landscaping”, including a mix of native and non-native shrubs and trees identified in Exhibits 8-10 in the MND. CDFW recommends that the MND include recommendations

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<sup>4</sup> 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.

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

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

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

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

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

## **ENVIRONMENTAL DOCUMENT FILING FEES**

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

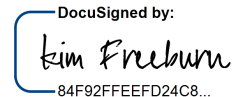
## **CONCLUSION**

CDFW appreciates the opportunity to comment on the MND to assist the City 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 recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised MND.

Patricia Villagomez  
City of Desert Hot Springs  
April 17, 2025  
Page 14

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](mailto:jacob.skaggs@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84F92FFEEFD24C8...

Kim Freeburn  
Environmental Program Manager

**Attachment 1: MMRP for CDFW-Proposed Mitigation Measures**

ec:

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**ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

Mitigation Measures	Timing and Methods	Responsible Parties
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<p><b>Mitigation Measure BIO-1: Nesting Birds</b></p> <p><b>The peak bird nesting season for resident birds in Southern California occurs between February 1 and September 15. To avoid impacts to resident and migratory nesting birds, all vegetation clearing, ground disturbance, and construction activity should be scheduled outside of the peak bird nesting season if possible. Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to all vegetation removal or ground-disturbing activities throughout all portions of the Project. 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</b></p>	<p><b>Timing:</b> No more than 3 days prior to all vegetation removal or ground-disturbing activities.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City and Project proponent</p> <p><b>Monitoring and Reporting:</b> City and Project proponent</p>
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<p><b>stop work if nesting pairs exhibit signs of disturbance.</b></p>		
<p><b>Mitigation Measure BIO-2: Burrowing Owl Focused and Pre-Construction Surveys</b></p> <p><b>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a CVMSHCP-approved Acceptable Biologist in accordance with the <i>Staff Report on Burrowing Owl Mitigation (2012 or most recent version)</i> prior to vegetation removal or ground-disturbing activities for all phases of Project construction. 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 Avoidance and Monitoring Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance and monitoring actions, including measures necessary to avoid take of burrowing owl individuals, nests, and eggs. The Burrowing Owl Plan shall include the number and location of occupied burrow sites (occupied site means at least one burrowing owl or its sign has been observed within the last three years; may 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(s) or burrowing owl individuals, nests, or eggs cannot be avoided, appropriate CESA authorization</b></p>	<p><b>Timing: Focused surveys:</b> Prior to vegetation removal or ground-disturbing activities. <b>Pre-construction surveys:</b> No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance and when there is a pause in construction of more than 30 days.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City and Project proponent</p> <p><b>Monitoring and Reporting:</b> City and Project proponent</p>



<p>(i.e., Incidental Take Permit under Fish and Game Code section 2081) should be obtained from CDFW 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> (2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys should be performed by a CVMSHCP-approved Acceptable 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 Avoidance and Monitoring Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>		
<p><b>Mitigation Measure BIO-[A]: CDFW Lake and Streambed Alteration Program</b></p> <p>Prior to construction and issuance of any grading permit, the Project proponent 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, <i>or</i> the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code</p>	<p><b>Timing:</b> Prior to construction and issuance of any grading permit.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> Project proponent</p> <p><b>Monitoring and Reporting:</b> Project proponent</p>

<p><b>section 1602 resources associated with the Project.</b></p>		
<p><b>Mitigation Measure BIO-[B]: CVMSHCP Compliance</b></p> <p><b>Prior to construction and issuance of any grading permit, the City shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee and transfer of revenues to the Coachella Valley Conservation Commission.</b></p>	<p><b>Timing:</b> Prior to construction and issuance of any grading permit.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City</p> <p><b>Monitoring and Reporting:</b> City</p>
<p><b>Mitigation Measure BIO-[C]: Artificial Nighttime Lighting</b></p> <p><b>Throughout construction and the lifetime operations of the Project, the City 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 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 <a href="http://darksky.org/">http://darksky.org/</a>). The City and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of</b></p>	<p><b>Timing:</b> Throughout construction and lifetime operations of the Project.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City and Project Proponent</p> <p><b>Monitoring and Reporting:</b> City and Project proponent</p>

<b>hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.</b>		
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