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



October 23, 2023
Sent via email

Nick Melloni
Principal Planner
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260

Haystack Stormwater Channel Rehabilitation Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2023090542

Dear Nick Melloni:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Palm Desert (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 activities that have the potential to adversely affect fish and wildlife resources.

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: City of Palm Desert

Objective: The Project proposes the reconstruction of a flood control channel and ephemeral wash. The subject facility provides an outlet for a drainage area defined by Highway 74 and extending as far south as Indian Hills Way, Andreas Canyon Drive, Carriage Trail, and Irontree Drive, and as far east as Portola Road. For the portion of the Project between Alamo Road and Heliotrope Drive, the existing nuisance water drain system located under the channel invert (centerline) will be removed and replaced with four underground 48-in diameter infiltration pipes and gravel beds with manhole access into each. The Project will also install underground chambers at each of the four storm drain outlets within this reach of the channel. Damaged irrigation will be removed and replaced. Disturbed portions of the grass-lined channel will be restored. For the portion of the Project site east of Heliotrope Drive and west of Portola Avenue, the channel side slopes in this reach will be regraded and shaped, and will be lined with rip-rap to a height of approximately 8 feet above the channel bed. A sub-grade side slope rip-rap cut-off wall will extend slope protection approximately 8 feet below the channel bed elevation. A riprap energy dissipater will be installed downstream (east) of the culverts under Heliotrope Drive. Also, the Project will relocate Southern California Edison poles and overhead lines currently located approximately 140 feet east of Heliotrope Drive crossing the channel. Throughout the Project area, existing trees and shrubs will be avoided to the greatest extent practicable; however, some loss or relocation of in-channel vegetation is expected.

The Project proposes multiple points of access during construction, including along Portola Avenue and an existing access road located on the north side of the channel. Access will also be taken from within the channel and occasionally along the south side of the channel. Construction staging is planned on a City-owned parcel (APN 630-200-021) located at the eastern reach of the channel, approximately 225 feet north of the intersection of Haystack Road and Portola Avenue, and immediately south of Marrakesh Drive.

Location: The proposed Project is located east of State Highway 74, west of Portola Avenue, and immediately north of Haystack Road. APNs: 630-025-050 & 052; 630-190-051 & 054; 628-290-013. Portion of the SE ¼ of Section 30, portion of S1/2 of Section 29, Township 5 South, Range 6 East, San Bernardino Baseline and Meridian. Project segment extends from State Highway 74 on the west to Portola Avenue on the east. The sub-segment planned for improvements extends from just west of Alamo Drive eastward to the Portola Avenue culvert.

Timeframe: The MND indicates that construction is expected to take approximately 9 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 description of the existing environmental setting. 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 likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant.

The MND lacks a discussion of the methods used for and findings from a habitat assessment and surveys for burrowing owl. In addition, the biological assessment for

the MND does not appear to have included analysis of potential direct and indirect impacts of the Project on bat species. To conduct a meaningful review and provide biological expertise on how to protect fish and wildlife resources, CDFW requires a complete and accurate description of the environmental setting.

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 adding mitigation measures for burrowing owls, bats, Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) compliance, and CDFW's Lake and Streambed Alteration Program, as well as replacing the mitigation, monitoring, and reporting measures for nesting birds.

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.).

Both the western and eastern sections of the Project site contain trees and shrubs that provide suitable habitat for nesting birds. Page 22 of the MND indicates that the western section of the project area consists of a vegetated swale with grass turf and landscaping including Kurrajong (*Brachychiton populneus*), unknown pine (*Pinus sp.*), African sumac (*Searsia lancea*), olive (*Olea europaea*), Lantana (*Lantana camara*), Spanish bayonet (*Yucca baccata*), Bermuda grass (*Cynodon dactylon*), and annual bluegrass (*Poa annua*). [...] The eastern portion of the project, east of Heliotrope Drive, contains an engineered sand channel with mostly native vegetation. The classification of the wash vegetation is smoke tree wash. The dominant shrub within the wash is smoke tree (*Psoralea arguta*). Other native scrubs included burrobrush (*Ambrosia salsola*), sweetbush (*Bebbia juncea*), brittlebush (*Encelia farinosa*), and creosote bush (*Larrea tridentata*). Page 3 of the MND indicates that "existing trees and shrubs will be avoided

to the greatest extent practicable, however, some loss or relocation of in-channel vegetation is expected.”

The MND includes Mitigation Measure BIO-1 for nesting birds, which indicates that “if ground disturbance or tree or plant removal is proposed between February 1st and August 31st, a qualified biologist shall conduct a nesting bird survey within 7 to 10 days of initiation of grading onsite, focusing on MBTA covered species, including burrowing owl. If active nests are reported, then species-specific measures shall be prepared. At a minimum, grading in the vicinity of a nest shall be postponed until the young birds have fledged. For construction that occurs between September 1st and January 31st, no preconstruction nesting bird survey is required. In the event active nests are found, exclusionary fencing shall be placed around the nests until such time as nestlings have fledged.” Conducting work outside the peak nesting season is an important avoidance and minimization measure; however, CDFW 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. 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 (Socular et al., 2017²). CDFW staff have observed that climate change conditions may result in the 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 considers the Mitigation Measure BIO-1 and Monitoring and Reporting Measure BIO-A to be insufficient in scope and timing to reduce impacts to nesting birds to less than significant. CDFW recommends the City replace Mitigation Measure BIO-1 and Monitoring and Reporting Measure BIO-A with the following measure:

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

² Socolar JB, Epanchin PN, Beissinger SR and Tingley MW (2017). Phenological shifts conserve thermal niches. Proceedings of the National Academy of Sciences 114(49): 12976-12981.

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. Established buffers 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.

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

2) *Burrowing Owl*

Burrowing owl (*Athene cunicularia*) is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

Page 20 of the Project's Biological Resources Assessment & Coachella Valley Multiple Species Habitat Conservation Plan Compliance Report (Biological Assessment) indicates that “no burrows suitable for burrowing owl use were observed on or adjacent to the project site. Where accessible, adjacent vacant lands were surveyed within 500 feet of the site. No burrowing owls, their sign, or burrows capable of supporting owls were observed in this buffer area.” The Biological Assessment lacks a discussion of the habitat assessment and or survey methods for burrowing owl used during the field assessment on March 8, 2023—i.e., if a habitat assessment and survey methods were

consistent with the 2012 *Staff Report on Burrowing Owl Mitigation*³. Appendix B of the Project's Biological Assessment indicates that wildlife observed within the Project site includes California ground squirrel (*Otospermophilus beecheyi*), which live in underground burrows. In California, California ground squirrel burrows are frequently used by burrowing owls⁴. Additionally, in Coachella Valley CDFW staff have observed burrowing owls occupying areas with levees, berms, dikes and similar features, some of which are present within the Project site. Given these reasons, the Project site likely contains suitable habitat for burrowing owls. Given the lack of details in the MND on the methods used to conduct a habitat assessment and surveys for burrowing owl, CDFW is unable to conduct a meaningful review of the Project's potential impacts on biological resources. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. CDFW recommends the MND is revised to include the findings of a recent habitat assessment and focused surveys, and impact assessment if surveys confirm occupied burrowing owl habitat within the Project site or surrounding area, per the guidelines provided in the 2012 *Staff Report on Burrowing Owl Mitigation*.

To support the City in reducing impacts to burrowing owl to less than significant, CDFW recommends that the City add Mitigation Measure BIO-[A] to a revised MND.

Mitigation Measure BIO-[A]: Burrowing Owl Avoidance

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

If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation*. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent 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

³ California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>

⁴ Ronan, N. A. 2002. Habitat selection, reproductive success, and site fidelity of burrowing owls in a grassland ecosystem. Thesis, Oregon State University, Corvallis, Oregon, USA.

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 avoidance is proposed. 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* (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.

3) Bats

The biological assessment for the MND does not appear to include analysis of bat species in the Project area or potential direct and indirect impacts to bat species resulting from Project activities. The California Natural Diversity Database (CNDDDB)/Biogeographic Information and Observation System (BIOS) indicates potential for western yellow bat (*Lasiurus xanthinus*) to occur in the Project area. In addition, page 22 of the MND indicates that California fan palm (*Washingtonia filifera*) occurs on the Project site. Western yellow bats are strongly associated with native California fan palm (*Washingtonia filifera*)⁵ and Mexican fan palm (*Washingtonia robusta*)⁷ in Coachella Valley. In California, western yellow bats appear to roost exclusively in the skirt of dead fronds of both native and non-native palm trees and

⁵ Stokes, D., M. Combs, and K.B. Clark. 2023. Surveys for Western Yellow Bat in the Coachella Valley. 2022. Annual Report. February 8, 2023

appear to be limited in their distribution by availability of palm habitat.⁶ Western yellow bats likely form small maternity groups in palm trees.⁷ Some individuals or populations may be migratory, although some individuals appear to be present year-round, even in the northernmost portion of the range including southern California.

CDFW recommends that a revised MND include analysis of potential direct and indirect impacts to western yellow bat and other bat species from Project activities. To ensure that impacts are reduced to a level that is less than significant, CDFW also recommends inclusion of the following mitigation measure in a revised MND:

Mitigation Measure BIO-[B]: Bat Surveys

Prior to the initiation of Project activities within suitable bat roosting habitat, the City of Palm Desert shall retain a qualified biologist to conduct focused surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. Two spring surveys (April through June) and two winter surveys (November through January) shall be performed by qualified biologists. Surveys shall be conducted during favorable weather conditions only. Each survey shall consist of one dusk emergence survey (start one hour before sunset and last for three hours), followed by one pre-dawn re-entry survey (start one hour before sunrise and last for two hours), and one daytime visual inspection of all potential roosting habitat on the Project site. Surveys shall be conducted within one 24-hour period. Visual inspections shall focus on the identification of bat sign (i.e., individuals, guano, urine staining, corpses, feeding remains, scratch marks and bats squeaking and chattering). Bat detectors, bat call analysis, and visual observation shall be used during all dusk emergence and pre-dawn re-entry surveys. If active hibernacula or maternity roosts are identified in the work area or 500 feet extending from the work area during preconstruction surveys, for maternity roosts, Project construction will only occur outside of the maternity roosting season. Maternity roosts shall not be evicted, excluded, removed, or disturbed. A minimum 500-foot no-work buffer shall be provided around wintering roosts (hibernacula). The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers shall be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula

⁶ Bolster, B.C., Bolster, B.C., (ed.). 1998. Terrestrial Mammal Species of Special Concern in California. Draft Final Report. May. Sacramento, CA. Prepared by Paul W. Collins. Prepared for California Department of Fish and Game, Nongame Bird and Mammal Conservation Program, Sacramento, CA.

⁷ Life History Account for Western Yellow Bat, California Department of Fish and Wildlife, February 2008.

are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise.

4) *Coachella Valley Multiple Species Habitat Conservation Plan*

The Project is located within the CVMSHCP Plan area and outside of a Conservation Area. With regard to compliance with the CVMSHCP, per Section 5.2.1.1 of the CVMSHCP, "local jurisdictions will impose a mitigation fee on new Development within the Plan Area that impacts vacant land containing Habitat for Covered Species or any of the conserved natural communities in the Plan through adoption, or amendment of an existing fee ordinance. In addition to large vacant areas, this also applies to small vacant lots within urban areas that still contain natural open space. The species Habitat distribution models and natural communities map prepared for the Plan may not show Habitat or a natural community on those parcels; however, this is only a result of the resolution at which those models and the natural communities map were prepared." The Project site contains desert dry wash woodland, a covered natural community under the CVMSHCP that provides habitat used in migration for CVMSHCP Covered Species including summer tanager (*Piranga rubra*), yellow warbler (*Setophaga petechia*), and yellow-breasted chat (*Icteria virens*). Therefore, the City is obligated to pay a Development Mitigation Fee for the Project. The MND lacks a mitigation measure for this CVMSHCP requirement. To ensure consistency with the CVMSHCP, CDFW recommends that the City include in a revised the MND the following mitigation measure:

Mitigation Measure BIO-[C]: CVMSHCP Compliance

Prior to construction and issuance of any grading permit, the City of Palm Desert 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.

5) *CDFW's Lake and Streambed Alteration Program*

Page 24 of the MND indicates "the Project site does not contain any streams, riparian habitat, marshes, protected wetlands, vernal pools, or sensitive natural communities protected by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service." CDFW is concerned about the accuracy of this statement. Page 1 of the MND indicates that the Project area "provides an outlet for a drainage area defined by Highway 74 and extending as far south as Indian Hills Way, Andreas Canyon Drive, Carriage Trail, and Irontree Drive and as far east as Portola Road." Flows captured in the Project area are conveyed to the east and "into a series of golf course drainage system systems farther east. These flows ultimately make their way to the Whitewater River". Page 2 of the Biological Assessment states that "review of aerial photography

and field reconnaissance indicate four potential drainage areas in a larger tributary area south of Haystack Road. These drainage areas are tributary to the Haystack Channel at Alamo Road, Chia Road, downstream of the intersection of Silver Spur Trail and Sun Coral Trail, and Portola Avenue. According to the project engineer's technical memorandum, there are eight (8) storm drains that discharge into the subject channel, ranging from 18-inch reinforced concrete pipe (RCP) to a 2-foot by 6-foot reinforced concrete box (RCB)." The Project site conveys stormflows and nuisance flows captured from areas described above and convey these flows through the Project site where they eventually enter into the Whitewater River.

Fish and wildlife resources subject to Fish and Game Code section 1600 et seq., include the bed, channel, and bank of any river, stream, or lake. Please note that "any river, stream, or lake" includes those that are dry for periods of time as well as those that flow year-round. 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.

The Project will change the bed, channel, or bank of a stream; therefore, CDFW recommends that City submit a notification of streambed alteration. More information on the notification process for the Lake and Streambed Alteration Program is available here: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

To support the City in complying with Fish and Game Code 1600 et seq., CDFW recommends that the City add the following mitigation measure to a revised MND:

MM BIO-[D]: CDFW Lake and Streambed Alteration Program

Prior to construction and issuance of any grading permit, 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 should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

6) *Landscaping*

The MND includes limited information on any replacement of vegetation that is removed or disturbed during Project construction activities. To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems

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

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 CNDDB 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.)

CONCLUSIONS

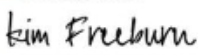
CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information for a meaningful review of impacts to biological resources, including burrowing owl and bats. The CEQA Guidelines indicate that recirculation is required when insufficient information in the MND precludes a meaningful review (§

Nick Melloni, Principal Planner
City of Palm Desert
October 23, 2023
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15088.5) or when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that a revised MND, including the results of a habitat assessment, focused surveys, and impacts assessment (if needed) for burrowing owl, analysis of potential impacts to bat species, and accurate assessment of stream resources that may be impacted by the Project, be recirculated for public comment. CDFW also recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised 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, Environmental Scientist, at jacob.skaggs@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW
Heather.Brashear@Wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
<p>Mitigation Measure BIO-1: Nesting Birds</p> <p>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. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>	<p>Timing: No more than 3 days prior to vegetation removal or ground-disturbing activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project Proponent and City of Palm Desert</p> <p>Monitoring and Reporting: City of Palm Desert</p>

<p>Mitigation Measure BIO-[A]: Burrowing Owl Avoidance</p> <p>No less than 60 days prior to the start of Project-related activities, a burrowing owl habitat assessment shall be conducted by a qualified biologist according to the specifications of the <i>Staff Report on Burrowing Owl Mitigation</i> (Department of Fish and Game, March 2012 or most recent version).</p> <p>If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist according to the <i>Staff Report on Burrowing Owl Mitigation</i>. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent 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 avoidance is proposed. 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</p>	<p>Timing: Habitat Assessment: No less than 60 days prior to the start of Project-related activities.</p> <p>Focused surveys: Prior to vegetation removal or ground-disturbing activities. Pre-construction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project Proponent and City of Palm Desert</p> <p>Monitoring and Reporting: City of Palm Desert</p>
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<p>result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>		
<p>Mitigation Measure BIO-[B]: Bat Surveys</p> <p>Prior to the initiation of Project activities within suitable bat roosting habitat, the City of Palm Desert shall retain a qualified biologist to conduct focused surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. Two spring surveys (April through June) and two winter surveys (November through January) shall be performed by qualified biologists. Surveys shall be conducted during favorable weather conditions only. Each survey shall consist</p>	<p>Timing: Prior to initiation of Project activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project Proponent and City of Palm Desert</p> <p>Monitoring and Reporting: City of Palm Desert</p>

<p>of one dusk emergence survey (start one hour before sunset and last for three hours), followed by one pre-dawn re-entry survey (start one hour before sunrise and last for two hours), and one daytime visual inspection of all potential roosting habitat on the Project site. Surveys shall be conducted within one 24-hour period. Visual inspections shall focus on the identification of bat sign (i.e., individuals, guano, urine staining, corpses, feeding remains, scratch marks and bats squeaking and chattering). Bat detectors, bat call analysis, and visual observation shall be used during all dusk emergence and pre-dawn re-entry surveys. If active hibernacula or maternity roosts are identified in the work area or 500 feet extending from the work area during preconstruction surveys, for maternity roosts, Project construction will only occur outside of the maternity roosting season. Maternity roosts shall not be evicted, excluded, removed, or disturbed. A minimum 500-foot no-work buffer shall be provided around wintering roosts (hibernacula). The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers shall be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise</p>		
<p>Mitigation Measure BIO-[C]: CVMSHCP Compliance</p> <p>Prior to construction and issuance of any grading permit, the City of Palm Desert shall ensure compliance with the Coachella Valley</p>	<p>Timing: Prior to construction and issuance of any grading permit.</p>	<p>Implementation: City of Palm Desert</p> <p>Monitoring and Reporting: City of Palm Desert</p>

<p>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.</p>	<p>Methods: See Mitigation Measure</p>	
<p>MM BIO-[D]: CDFW Lake and Streambed Alteration Program</p> <p>Prior to construction and issuance of any grading permit, 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 should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Timing: Prior to construction and issuance of any grading permit.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: Project proponent and City of Palm Desert</p> <p>Monitoring and Reporting: City of Palm Desert</p>