State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Blvd, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

August 17, 2023
Sent via e-mail

Laura Gutierrez
City Manager
City of Calipatria
125 North Park Ave
Calipatria, CA 92233

CITY OF CALIPATRIA EASTSIDE SPECIFIC PLAN (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH#: 2023070424

Dear Ms. Gutierrez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Calipatria for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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 Calipatria

Objective: The Project proposes land-use changes to accommodate future development of an approximate 133.38-acre site for housing units, commercial use, and industrial use. The northern portion of the site would consist of single-family housing developments with a portion set aside for open space. The central portion of the site would consist of single-family housing developments and residential commercial mixed-use. The southern portion of the site would consist of residential commercial mixed-use and residential industrial

[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.

mixed-use. The parcels situated west of S Railroad Ave would accommodate commercial industrial use.

The Project would require a Re-Zone and General Plan Amendment to change the existing City Zoning land use designation from R-1 (Low Density Residential), R-2 (Medium Density Residential), R-3 (High Density Residential), OS-G (Open Space/Recreation), CP (General Commercial), M-2 (Heavy Industry), and DC (Downtown District) to R-1 (Low Density Residential), RC (Commercial Residential Mixed-Use), RI (Industrial Residential Mixed-Use), OS-G (Open Space/Recreational), and CI (Commercial Industrial).

Location: The Project is located east of Industrial Avenue, south of Young Road, north of Date Street, and west of East Avenue on the east side of the City of Calipatria in Imperial County, California (33.127419°, -115.505458°). The Project site encompasses undeveloped land, housing developments, and commercial facilities. The Project site is surrounded by agricultural fields along the north and east boundaries, and agriculture manufacturing facilities and housing developments along the west and south boundaries. Additionally, an abutting canal runs along the northern and eastern boundaries of the Project site.

Timeframe: None provided.

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 of Calipatria 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) to biological resources and whether those impacts are less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. The MND lacks a complete and accurate assessment of biological resources on the Project site. CDFW recommends that additional information and analyses be added to a revised MND, along with avoidance, minimization, and mitigation measures that reduce impacts to less than significant.

<u>Project Description</u>

CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

The MND does not identify the Assessor's Parcel Numbers over which the proposed Project will take place. The MND should clearly identify the area and extent of the proposed Project.

Although the intent of the MND is to propose City Zoning changes that would allow for future residential, industrial, and commercial development, CDFW is concerned that future Project activities including, but not limited to, utility extensions and stormwater improvements have the potential to pose a significant impact to biological resources and have not been adequately described in the MND (see "Timing of Construction and Construction Activities" section below). CDFW recommends that the City of Calipatria analyze all potential impacts to biological resources resulting from future development of the proposed Project area and include avoidance, minimization, and mitigation measures that would reduce impacts to a level less than significant.

<u>Existing Environmental Setting</u>

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.

CDFW is concerned that no biological field assessment was conducted for the MND. The Project site has the potential to support wildlife including special-status species because of the presence of vegetation, open land, two canals, and adjacency to agricultural fields. 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 avoid or reduce Project impacts to less than significant.

Mitigation Measures

CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to biological resources to less than significant. To support the City of Calipatria in ensuring that Project impacts to biological resources are reduced to a level that is less than significant, CDFW recommends adding mitigation measures for the assessment of biological resources, nesting birds, burrowing owl (*Athene cunicularia*), construction noise, artificial nighttime light, and CDFW's Lake and Streambed Alteration Program.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Timing of Construction and Construction Activities

Initial Study/Mitigated Negative Declaration (IS/MND) document, Page #2 and 14

Issue: The MND does not analyze impacts to biological resources associated with the timing of Project construction and potential construction activities.

Specific impact: The intent of the MND is to propose City Zoning changes on the Project's parcels that would allow for future residential, industrial, and commercial development. However, the MND should acknowledge that if the Project site is left vacant or left graded and inactive in the interim period between construction phases, environmental conditions may change. Grading and leaving a site inactive may result in the area becoming occupied by wildlife that utilize disturbed areas (e.g., ground squirrels and burrowing owls). The MND (p. 2) states "due to the stagnation of housing development within the city, only two residential developments have been constructed between 2011 and 2022." As demonstrated, there is a potential for an extended timeframe for development on the Project site, which may result in the area changing and becoming occupied by wildlife that utilize disturbed areas.

Additionally, the MND (p. 14) states that "utility extensions will impact undisturbed areas that may affect biological resources. The Project proponent has not adequately addressed stormwater issues and potential improvements have yet to be identified. Addressing the stormwater issue may result in improvements that could impact biological resources." A complete description of these Project activities and analyses of impacts to biological resources resulting from the Project activities is lacking in the MND.

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

CDFW Recommendations: A revised MND should analyze impacts to biological resources resulting from an extended timeline for Project activities, pauses in construction, and impacts due to specific construction activities such as utility extensions and stormwater improvements. The revised MND should acknowledge that wildlife may move into disturbed or graded sites when construction is paused. The revised MND should also acknowledge that preconstruction surveys for biological resources will need to be repeated prior Project activities and after pauses in construction to assess the presence of biological resources and to avoid or reduce impacts to less than significant.

COMMENT #2: Landscaping

IS/MND document, Section XVIII, Page #44, MFS-1

Issue: The MND lacks a description of the type of landscaping that will be installed and maintained over the life of the Project.

Specific impact: Mitigation measure MFS-1 states (p. 44) "the City will require developers to implement landscaping, primarily trees, within the project area. Any trees that are planned for removal will be replaced or relocated within the project site when possible." However, no further details are provided.

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

CDFW Recommendation: 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/.

II. Environmental Setting and Related Impact Shortcoming

COMMENT #3: Assessment of Biological Resources

IS/MND document, Section IV, Pages #14-17

Issue: The MND does not adequately identify the Project's significant, or potentially significant, impacts to biological resources.

Specific impact: The MND (p. 16) states the Project site contains vegetation and the potential to support burrowing owl. However, the MND lacks a recent general field assessment of biological resources located within the Project footprint and surrounding areas, and no focused or protocol-level surveys were performed for the detection of special-status species. CDFW is concerned about the potential for special-status species to occur on or near the Project site. The Project is surrounded by vacant land to the north, east, and south, and there is potential for special-status species to be impacted either directly or indirectly by Project activities. The California Natural Diversity Database (CNDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of ESA-listed, CESA-listed, or other special-status

species have been reported near the Project area including, but not limited to: mountain plover (*Charadrius montanus*), burrowing owl (*Athene cunicularia*), black-tailed gnatcatcher (*Polioptila melanura*), California black rail (*Laterallus jamaicensis coturniculus*), Yuma Ridgway's rail (*Rallus obsoletus yumanensis*), loggerhead shrike (*Lanius ludovicianus*), and lowland leopard frog (*Rana yavapaiensis*).

Recent surveys during the appropriate times of the year are needed to inform and identify potential impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and to determine whether impacts to biological resources have been mitigated to a level that is less than significant. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years.

Evidence impact would be significant: 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 with respect to biological resources 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. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed.

Recommended Potentially Feasible Mitigation Measure:

To establish the existing environmental setting with respect to biological resources, CDFW recommends that a revised MND include the following mitigation measure:

Mitigation Measure BIO-[A]: Assessment of Biological Resources

> **Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.**

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

III. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #4: CDFW Lake and Streambed Alteration (LSA) Program

IS/MND document, Section IV, Page #15, MM BIO-1

Issue: The MND acknowledges that drainage canals are located in proximity to the proposed Project but does not include mitigation measures to avoid or reduce impacts to a level less than significant.

Specific impact: The MND (p. 15) indicates that two canals run along the northern and eastern boundaries of the Project site. CDFW review of aerial imagery confirms the location of the two drainage canals located north and east of the Project site, named D Drain and E Drain. Drainage canals and ditches may provide suitable habitat for biological resources, including burrowing owl[2] and lowland leopard frog[3]. Potential direct and indirect impacts to the canals and associated fish and wildlife resources, such as burrowing owl and lowland leopard frog, resulting from Project construction are subject to notification under Fish and Game Code section 1602.

Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. 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. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the Project that would eliminate or reduce harmful impacts to fish and wildlife resources. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). Early consultation with CDFW is recommended since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To submit a Lake or Streambed Alteration notification, visit: https://wildlife.ca.gov/Conservation/Environmental-Review/LSA.

Recommended Potentially Feasible Mitigation Measure:

Although the MND includes Mitigation Measure BIO-1 for biological assessment of agricultural drains, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends the City of Calipatria include the following additional mitigation measure in a revised MND:

MM BIO-[B]: Lake and Stream Alteration (LSA) Program

> **Prior to Project-activities 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 shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

COMMENT #5: Nesting Birds

IS/MND document, Section IV, Pages #14-17 and 30

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[2] Coulombe, H.N. 1971. Behavior and population ecology of the burrowing owl, *Speotyto cunicularia*, in the Imperial Valley of California. The Condor 136(1): 143-148.
[3] https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=190356&inline

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to nesting birds or ensure that impacts are mitigated to a level less than significant.

Specific impact: The MND (p. 16) indicates that "nesting birds may be present in on-site vegetation and could be impacted during construction of future projects," and (p. 30) the Project site is within a resource area for the black-tailed gnatcatcher (*Polioptila melanura*). CDFW is concerned about the impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and construction. Additionally, 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.). 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 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.

Evidence impact would be significant: It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 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.).

Recommended Potentially Feasible Mitigation Measure:

CDFW recommends the revised MND include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting on-site.** Preconstruction nesting bird surveys shall be performed within 3 days prior to Project activities to determine the presence and location of nesting birds. CDFW recommends the City of Calipatria include Mitigation Measure BIO-[C] in a revised MND as follows:

MM BIO-[C]: Avoidance of 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. 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.

COMMENT #6: Burrowing Owl Surveys

IS/MND document, Section IV, Pages #14-17

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are mitigated to a level less than significant.

Specific impact: The MND (p. 15) indicates that it is possible to have burrowing owls present on the Project site "due to manmade features such as the irrigation canals, ditches, drains, and the cultivation of agricultural crops within the region." The MND (p. 16) also states that the manmade features may result in "owls creating nests within the brims and banks of agricultural fields. Thus, there is potential conflicts to occur regarding Burrowing Owls." Burrowing owls have a high potential to move into disturbed sites prior to and during construction activities. Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs; destroying nesting or foraging habitat; or impacting burrowing owl populations through changes in vegetation via the destruction, conversion, or degradation of burrowing owl habitat. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, and other activities. Changes in vegetation can result from the destruction, conversion, or degradation of nesting, foraging, or over-wintering habitats; destruction of natural burrows, and general Project disturbance that has the potential to harass owls at occupied burrows.

Evidence impact would be significant: Burrowing owl 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.).

Recommended Potentially Feasible Mitigation Measure:

CDFW recommends that prior to commencing Project activities for all phases of Project construction, surveys for burrowing owl be conducted for the entirety of the Project site by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). CDFW recommends the City of Calipatria include a Mitigation Measure BIO-[D] in a revised MND as follows:

MM BIO-[D]: Burrowing Owl Surveys

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

If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). 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, monitoring, relocation, minimization, and/or mitigation 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 compensatory mitigation 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. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. 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.

COMMENT #7: Construction Noise

IS/MND document, Section XII, Pages #33-34

Issue: The MND does not include sufficient mitigation measures to avoid or reduce impacts to biological resources from construction noise to a level less than significant.

Specific impact: The MND (p. 33) states the Project would result in a substantial temporary noise increase from the operation of equipment for on-site construction activities which can reach up to 80 dBA but includes no analysis of the impacts of construction noise on biological resources. These levels exceed exposure levels that may adversely affect wildlife species at 55 to 60 dBA.

Evidence impact would be significant: Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cures (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

Recommended Potentially Feasible Mitigation Measure:

Because of the potential for construction noise to negatively impact wildlife, CDFW recommends a revised MND include an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that impacts to wildlife are avoided or reduced to less than significant. Although the MND includes MM NOI-1, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to biological resources to a level less than significant. CDFW recommends adding the following mitigation measure to a revised MND:

MM BIO-[E]: Construction Noise Impacts to Biological Resources

During all Project construction, the City of Calipatria shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. The City shall ensure use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

COMMENT #8: Artificial Nighttime Light

IS/MND document, Section I, Page #9

Issue: The MND does not analyze impacts to biological resources from artificial nighttime light and includes no mitigation measures to avoid or reduce impacts to biological resources to a level less than significant.

Specific impact: The MND (p. 9) indicates the Project would "incentivize the construction of new developments which would include lighting on buildings, parking spaces, and in housing (exterior lights, parking lot, etc.). The document also states (p. 9) future developments would introduce nighttime light and daytime glare; however, impacts to biological resources are not analyzed and no mitigation measures are proposed. The direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures to reduce impacts to less than significant should be included in a revised MND.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and 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 (Gatson et al. 2013). Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Recommended Potentially Feasible Mitigation Measure:

Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends a revised MND include an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant. CDFW recommends the City include the following mitigation measure in a revised MND:

MM BIO-[F]: Artificial Nighttime Light

During Project construction and operation, the City of Calipatria shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City shall ensure use 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.

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 of Calipatria in identifying and mitigating Project impacts on biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant impacts on biological resources. The CEQA Guidelines indicate that recirculation is required when insufficient information in the MND precludes a meaningful review (§ 15088.5) or when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW concludes that the MND lacks sufficient information for a meaningful review of impacts to biological resources, including a complete project description and an assessment of biological resources. CDFW recommends that a revised MND, including a complete Project description and a current assessment of biological resources, be recirculated for public comment. CDFW also recommends that a revised MND include an analysis of impacts to biological resources from construction noise and artificial nighttime lighting, as well as mitigation measures described in this letter for the assessment of biological resources, nesting birds, burrowing owl (*Athene cunicularia*), construction noise, artificial nighttime light, and CDFW's Lake and Streambed Alteration Program to ensure impacts to biological resources are avoided or reduced to less than significant.

CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Alyssa Hockaday, Senior Environmental Scientist (Specialist) at (760) 920-8252 or Alyssa.Hockaday@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
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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

Jeorge Galvan, Consultant City Planner, City of Calipatria
jgalvan@theholtgroup.net

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

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Biological Resources (BIO)		
Mitigation Measure (MM) Description	**Implementation Schedule**	**Responsible Parties**
MM BIO-[A]: Assessment of Biological Resources Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and	Prior to Project construction activities	City of Calipatria

should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.		
MM BIO-{B]: Lake and Stream Alteration (LSA) Program Prior to Project activities 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 shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.	Prior to Project activities and issuance of any grading permit.	City of Calipatria
MM BIO-[C]: Avoidance of 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. 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.	No more than three (3) days prior to vegetation clearing or ground-disturbing activities.	City of Calipatria
MM BIO-[D]: Burrowing Owl Surveys No less than 60 days prior to the start of Project-related activities, a burrowing owl habitat assessment shall be conducted by a qualified biologist according to the specifications of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012 or most recent version). If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most	**Habitat assessment:** No less than 60 days prior to the start of Project-related activities. **Focused surveys:** Prior to the start of Project-related activities.	City of Calipatria

recent version). 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, monitoring, relocation, minimization, and/or mitigation 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 compensatory mitigation 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. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. 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.	**Pre-construction surveys:** No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.	
MM BIO-[E]: Construction Noise Impacts to Biological Resources During all Project construction, the City of Calipatria shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. The City shall ensure use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.	During Project activities.	City of Calipatria
MM BIO-[F]: Artificial Nighttime Light During Project construction and operation, the City of Calipatria shall eliminate all nonessential lighting	During Project construction	City of Calipatria

throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City shall ensure use 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.	activities and operation.	