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GAVIN NEWSOM, Governor
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November 19, 2025
Sent via email

Juan Raya
City Engineer
City of Indio
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Avenue 50 Improvement Project from Jefferson Street to Botella Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2025100997

Dear Juan Raya:

The California Department of Fish and Wildlife (CDFW) received a Draft Mitigated Negative Declaration (MND) from the City of Indio (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.

[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.

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 Indio and City of La Quinta

Objective: The Project proposes improvements to Avenue 50 extending from the intersection of Jefferson Street and Avenue 50 to the intersection of Botella Place and Avenue 50. The centerline of Avenue 50 between Jefferson Street and Madison Street is the city limit between the City of Indio to the north and the City of La Quinta to the south. Proposed improvements generally include widening Avenue 50 from one travel lane to two travel lanes in each direction, closing gaps in existing sidewalks and trails, and constructing a Class IV bike lane and curbs and gutters. The Project will also provide storm drain lines at varying lengths that are currently not provided by the existing roadway. The storm drain lines function as underground retention/infiltration basins for the street subareas. Each storm drain line is a 60-inch diameter perforated high-density polyethylene pipe embedded in a trench filled with clean washed stones (gravel), located under the median or sidewalk/parkway on both sides of Avenue 50. Catch basins with local depressions are placed at the low points of the street and at the downstream end of each storm drain pipe to collect and convey the street flow to the underground pipe for storage and infiltration. New streetlights are proposed in City of Indio. No landscaping is proposed.

Location: The Project site is located in the Cities of Indio and La Quina in Riverside County, California, along Avenue 50 from the intersection of Jefferson Street and Avenue 50 to the intersection of Botella Place and Avenue 50.

Timeframe: The MND indicates that construction activities would last approximately 18 months.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and

wildlife (biological) resources. The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are reduced to less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information to facilitate a meaningful review by CDFW, including a complete and accurate assessment of biological resources on the Project site. CDFW requests that additional information and analyses be added to a revised MND, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

Existing Environmental Setting

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

The MND lacks a complete assessment of biological resources associated with burrowing owl (*Athene cunicularia*) and western yellow bat (*Lasiurus xanthinus*) within the Project site and surrounding area. A complete and accurate assessment of the environmental setting and Project-related impacts to biological resources is needed to both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures reduce Project impacts to less than significant.

Mitigation Measures

CEQA requires that an MND include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support the City in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for surveys for bats, avoidance of bats during tree removal, and artificial nighttime lighting, as well as revising the mitigation measures for nesting birds and burrowing owls.

1) Nesting Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take,

possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

With regard to the CVMSHCP, per its associated Implementing Agreement (IA) and Permits from CDFW and the U.S. Fish and Wildlife Service (the Wildlife Agencies), Take associated with Covered Activities will not be in violation of the Migratory Bird Treaty Act and will be consistent with Fish and Game Code sections 3503 and 3503.5; therefore, all Covered Activities within and outside Conservation Areas must undertake measures to avoid the take of individuals, nests, and eggs of nesting birds. The CVMSHCP includes a general conservation measure that applies to all bird species to avoid impacts to habitat for nesting birds during the nesting season (CVMSHCP Section 9.7). Per IA Section 13.8, City is obligated to comply with all terms and requirements of the CVMSHCP, the Wildlife Agencies' Permits that create the CVMSHCP, and the IA, including compliance with laws that protect nesting birds.

Page 24 of the MND indicates that "native and ornamental vegetation is present within and adjacent to the Project footprint, which is potentially suitable habitat for nesting birds." CDFW adds that the Project site contains suitable habitat for both ground-nesting birds and birds that nest in shrubs and trees.

The MND includes Mitigation Measure BIO-3 for nesting birds, which indicates "If construction or vegetation removal must occur during the breeding season of February 1 to August 31, a qualified biologist shall survey potential nesting sites." CDFW considers the mitigation measure for nesting birds in the MND to be inadequate in scope and timing to avoid or reduce impacts to nesting birds to a level less than significant. In alignment with the CVMSHCP's general conservation measure for nesting birds (CVMSHCP Section 9.7), CDFW recommends Project construction activities are conducted outside of the peak nesting bird season. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds and their nests and eggs are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability

of resources (Socolar et al., 2017[2]). 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 therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

To support the City in avoiding or reducing impacts to nesting birds to a level less than significant, CDFW recommends Mitigation Measure BIO-3 is revised as follows, with additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-3: Nesting Birds

To the greatest extent feasible, the Project will avoid construction activities during the peak nesting season (January 15 through September 15). Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. ~~If construction or vegetation removal must occur during the breeding season of February 1 to August 31, a qualified biologist shall survey potential nesting sites within the Project footprint and immediately adjacent to the Project limits no more than three (3) days prior to the start of work or as otherwise deemed necessary at the discretion of the qualified biologist. For raptors, an initial no-~~

[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.

~~disturbance buffer of 500 feet shall be established around active nests and demarcated with fencing or flagging. For non-raptors, an initial no-disturbance buffer of 250 feet shall be established around active nests and demarcated with fencing or flagging. No Project-related activities shall occur within the buffer zone until a qualified biologist has determined that the fledglings have fledged and are no longer reliant on the nest or parental care for survival. The buffer distance for non-listed species may be reduced at the discretion of a biologist who has extensive experience observing bird behavior and monitoring nests; and if the biologist observes that the birds' behavior is not disturbed by activity closer to the nest, depending on the sensitivity of the species and nest location. Buffer sizes for listed-species listed may be reduced in consultation with CDFW and/or United States Fish and Wildlife Service. Avoidance buffers may be reduced with the use of noise attenuation barriers at the discretion of the qualified biologist. Vegetation removals may occur between September 1 to January 31 without a pre-construction nesting bird survey (barring requirements of the other biological mitigation measures).~~

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) in Attachment 1 for revised MM BIO-3 and MM BIO-2, as well as CDFW-recommended MM BIO-[A], MM BIO-[B], and MM BIO-[C].

2) Burrowing Owl

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

Take of individual burrowing owls and their nests or eggs is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill." Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules

and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

With regard to the CVMSHCP, the CDFW Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 does not provide Take Authorization for burrowing owl individuals, nests, or eggs. To the contrary, section 3.5.6 of the NCCP Permit states burrowing owl "pairs or individuals will not be Taken" and reiterates that the "HCP/NCCP does not authorize Take of [burrowing owl] nests [or] eggs[.]" Therefore, throughout the CVMSHCP area—both within and without Conservation Areas—Permittees must ensure that activities occurring within their jurisdictions do not result in the take, possession, or destruction of burrowing owl individuals, nests, or eggs. Any activity occurring within the CVMSHCP area that results in the take of burrowing owl individuals, nests, or eggs would be unlawful and would not be a Covered Activity under the CVMSHCP. Per IA Section 13.8, City is obligated to comply with all terms and requirements of the CVMSHCP, the Wildlife Agencies' Permits that create the CVMSHCP, and the IA, including compliance with laws that protect burrowing owls.

Pages 23 and 24 of the MND states that "the field survey discovered mammal burrows [so] there is potential for burrowing owl and Coachella Valley round-tailed ground squirrel to exist in unpaved road shoulders." CDFW agrees that the Project site contains suitable nesting and foraging habitat for burrowing owl. Regarding survey methods, page 22 of the MND states that "SWCA conducted two reconnaissance-level biological surveys of the Project area on March 4 and 5, 2024 for the purpose of assessing the extent of impacts to biological resources." The MND and its supporting documents lack information on whether focused surveys for burrowing owl were conducted and the methods used to conduct any surveys for burrowing owl. Because the MND lacks the findings of recent focused surveys for burrowing owl following the guidelines in the *Staff Report on Burrowing Owl Mitigation*,[3] the number and locations of suitable and occupied burrows within the Project site are unknown. Given the lack of results from focused surveys for burrowing owl following recommended protocols and the lack of survey reports, CDFW is limited in its ability to provide biological expertise to support the City in reducing impacts to burrowing owl to a level less than significant. CDFW recommends that the MND is revised to include the results of four focused surveys for burrowing owl within the entire Project site and surrounding area, including survey reports,[4] following

[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&inline

[4] Survey reports should include details on survey methods and results, including, but not limited to, the names and qualifications of surveyor(s); a description of survey methods; a description of the conditions of the project site and recent photos; map(s) showing the locations of all suitable burrows, occupied burrows, burrowing owls, and burrowing owl sign; descriptions of burrowing owl behavior observed; California Natural Diversity Database (CNDDB) field survey forms, etc. For more information, see Appendix D, Survey Reports, of the CDFW 2012 Staff Report on Burrowing Owl Mitigation.

the guidelines outlined in Appendix D of the *Staff Report on Burrowing Owl Mitigation* and to incorporate appropriate avoidance, minimization, and mitigation measures for burrowing owl. Focused surveys are needed to inform appropriate avoidance, minimization, and mitigation measures and support the City in avoiding or reducing impacts to burrowing owl to a level less than significant. CDFW requests that if burrowing owls are detected during focused surveys, survey results are submitted to the Wildlife Agencies, and the City initiate consultation with the Wildlife Agencies to identify a path forward regarding the protection of burrowing owls.

The MND includes Mitigation Measure BIO-2, which indicates that a "qualified biologist shall conduct two take avoidance pre-construction burrowing owl surveys onsite following the methods outlined in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012)." In addition to pre-construction surveys, CDFW recommends that focused burrowing owl surveys are first conducted and the results submitted to Wildlife Agencies. This provides time for the Project proponent to start coordination with the Wildlife Agencies early to identify appropriate avoidance, minimization, and mitigation measures and reduce the chance of Project delays. Without details on focused surveys and appropriate information sharing and coordination with the Wildlife Agencies, CDFW considers Mitigation Measure BIO-2 to be inadequate in scope and timing to avoid or reduce impacts to burrowing owl to a level less than significant.

To support the City in avoiding or reducing impacts to burrowing owl to a level less than significant, CDFW recommends that Mitigation Measure BIO-2 is revised with the following additions in **bold** and removals in ~~strikethrough~~:

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

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a CDFW-approved qualified biologist prior to any Project activities, including vegetation- or ground-disturbing activities. CDFW strongly recommends that focused surveys are conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version)[5]. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall submit the results of focused surveys to CDFW and USFWS as soon results become available and before commencement of any Project activities, including any vegetation- or ground-disturbing activities. CDFW recommends that the information included in the survey results be consistent with Appendix D of the *Staff Report on Burrowing*

[5] California Department of Fish and Wildlife (CDFW). 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.

***Owl Mitigation*, including a detailed map showing locations of all burrowing owls, burrowing owl sign, potential burrows, and occupied burrows (occupied means at least one burrowing owl or its sign has been observed within the last three years; may be indicated by owl sign including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site); a description of the behavior of burrowing owls during surveys; a description of survey methods; and other items listed in Appendix D of the *Staff Report on Burrowing Owl Mitigation* under "Survey Reports." Consultation with CDFW and USFWS must be completed prior to commencement of any Project activities, including vegetation- or ground-disturbing activities. If impacts to occupied burrowing owl habitat or burrow(s) or burrowing owl individuals, nests, or eggs cannot be avoided, appropriate NCCP (Fish and Game Code section 2835) or CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081(b)) should be obtained from CDFW prior to commencement of Project activities, including vegetation- or ground-disturbing activities.**

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys shall be performed by a CDFW-approved 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 and the qualified biologist shall coordinate with CDFW and USFWS. Project activities shall not recommence until consultation with CDFW and USFWS is completed. ~~A qualified biologist shall conduct two take-avoidance pre-construction burrowing owl surveys onsite following the methods outlined in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012). The survey area shall include the construction area and adjacent areas within 500 feet of the construction limits, or to the edge of the property if less than 500 feet. The first shall occur no more than 14 days prior to ground disturbance, and the second survey shall occur within 24 hours of ground disturbance. The survey shall locate suitable burrows and determine whether the burrows are occupied by burrowing owl. If occupied burrowing owl burrows are detected, the City shall consult with the California Department of Fish and Wildlife (CDFW) to determine what course of action is needed. The following steps shall be taken to avoid impacts: no activity shall occur within a minimum 50 meters (approximately 160 feet) of occupied burrows during the non-breeding season (September 1 through January 31), or within a minimum of 200 meters (approximately 656 feet) during the nesting season (February 1 through August 31). With CDFW approval, these buffers may be adjusted if the owls show tolerance of the surrounding activity. If avoidance is not feasible, passive relocation of burrowing owls during the non-nesting period may be possible following the development of a Burrowing Owl Relocation Plan approved by CDFW.~~

3) Bats

Regarding the occurrence potential for western yellow bat, Appendix D-6 of the Project's Biological Technical Report (Biological Assessment), dated June 2025, indicates the following: "Absent. No suitable habitat. Palm trees are prolific down the roadway and there is a man-made channel that runs near the roadway. Records are historic and > 30-years-old." The MND and its supporting documents lack additional information on the presence or avoidance, minimization, or mitigation measures for western yellow bat. CDFW disagrees with the conclusion that no suitable habitat for western yellow bat is located within or adjacent to the Project site. CDFW notes that the Project site contains suitable roosting habitat for western yellow bat in the untrimmed frond skirts of numerous native and/or non-native fan palms (*Washingtonia* sp.) along Avenue 50 within or adjacent to the Project area. Without appropriate avoidance, minimization, and mitigation measures, such as surveys to determine presence and appropriate methods to remove fan palms (if removal is required), CDFW considers the MND to be inadequate in avoiding or reducing impacts to western yellow bat to a level less than significant.

To support the City in avoiding or reducing impacts to western yellow bat to a level less than significant, CDFW recommends that the City add the following mitigation measures to a revised MND:

Mitigation Measure BIO-[A]: Surveys for Daytime, Nighttime, Wintering (Hibernacula), and Maternity Roosting Sites for Western Yellow Bat

Prior to commencing Project activities, a CDFW-approved qualified bat biologist shall perform bat habitat/roosting surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. 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 maternity roosts are identified in the work area or 500 feet extending from the work area, Project construction will only occur between October 1 and February 28, outside of the maternity roosting season when young bats are present but are not yet ready to fly out of the roost. Maternity roosts shall not be evicted, excluded, removed, or disturbed. If active hibernacula are identified in the work area or 500 feet extending from the work area, a minimum

500-foot no-work buffer shall be provided around 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. Hibernacula roosts shall not be evicted, excluded, removed, or disturbed.

Regarding the removal of any fan palms (*Washingtonia* sp.) within or adjacent to the Project site, CDFW recommends the following mitigation measure is added to a revised MND to support the City in avoiding or reducing impacts to western yellow bats to less than significant:

Mitigation Measure BIO-[B]: Avoidance of Bats during Tree Removal

Tree removal work with the potential to house roosting bats shall be performed between September 15 and October 31 to minimize direct impacts to roosting bats. This time period is after young are volant (flying) but before expected onset of torpor (wintering inactivity). Tree removal work may also be conducted between February 15 and March 31, following winter torpor and prior to the start of the maternity season. No tree removals shall occur during the hibernation season, which typically begins in November or December (depending on weather conditions) and continues through mid-February, due to the high potential for mortality of hibernating bats. Depending on weather conditions and the best professional judgement of a qualified bat biologist approved by CDFW, tree removal work may be performed in November if the forecasted nighttime low temperatures on the evening of removal and the subsequent four evenings do not drop below 45˚F. In November, if weather is cold (i.e., forecasted nighttime low temperatures reach 45˚F or less for that evening and the next four evenings), then no tree removals shall be performed. All palm removals shall require a two-step removal process and the involvement of a CDFW-approved qualified bat biologist to ensure that no roosting bats are killed during this activity. The following two-step tree removal process shall be implemented over two consecutive days: on Day 1, live palm fronds located above the frond skirt, and as identified by a qualified bat biologist, will be removed. On Day 2, the remainder of the tree may be removed without supervision by a qualified bat biologist.

4) Artificial Nighttime Lighting

Page 15 of the MND indicates that the Project "would introduce new sources of light from new streetlights proposed within Indio. The Project site is within Zone B of the Mount Palomar Nighttime Lighting Policy Area, which requires unique nighttime lighting standards. In compliance with the Mount Palomar Nighttime Lighting Policy and Indio standards, lighting will be designed and installed to direct downwards onto the roadway and will not substantially alter the nighttime views along the Project site." The MND lacks an analysis of direct, indirect, and cumulative impacts of artificial nighttime

lighting, including impacts associated with long-term operations, on biological resources including migratory birds that fly at night, burrowing owls, bats, and other nocturnal and crepuscular wildlife. The Project is located adjacent to vacant and landscaped areas on the north and south sides of Avenue 50—areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, burrowing owls, bats, and other nocturnal and crepuscular wildlife. The Project's proposed artificial nighttime lighting has the potential to significantly and adversely affect wildlife in these vacant areas adjacent to the Project site. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation.[6] Many species use photoperiod cues for communication (e.g., bird song[7]), determining when to begin foraging,[8] behavioral thermoregulation,[9] and migration.[10] Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.[10]

CDFW recommends that the MND is revised to include an analysis of the direct, indirect, and cumulative impacts of artificial nighttime lighting associated with the Project's long-term operations on biological resources, and appropriate avoidance, minimization, and mitigation measures that will reduce impacts to less than significant.

To support the City in avoiding, minimizing, and mitigating for the Project's direct and indirect impacts of artificial nighttime lighting on biological resources, CDFW recommends that the City include in a revised MND the following mitigation measure:

Mitigation Measure BIO-[C]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the Cities of Indio and La Quinta shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The Cities of Indio and La Quinta shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night

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[6] Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. Biological Reviews, 88.4: 912-927.
[7] Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139.
[8] Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. Current Biology 19:1123–1127.
[9] Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. Ecology 58:98–108.
[10] Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. Frontiers in Ecology and the Environment 2:191–198.

sky (see the International Dark-Sky Association standards at http://darksky.org/). The Cities of Indio and La Quinta shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

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 City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised MND.

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

Sincerely,

DocuSigned by:
Kim Freeburn
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Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	**Timing and Methods**	**Responsible Parties**
Mitigation Measure BIO-3: Nesting Birds **To the greatest extent feasible, the Project will avoid construction activities during the peak nesting season (January 15 through September 15). 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**	**Timing:** No more than 3 days prior to all vegetation removal or ground-disturbing activities throughout all phases of the Project.	**Implementation**: City of Indio and City of La Quinta **Monitoring and Reporting**: City of Indio

direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.	**Methods:** See Mitigation Measure	
Mitigation Measure BIO-2: Burrowing Owl Focused and Pre-Construction Surveys **Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a CDFW-approved qualified biologist prior to any Project activities, including vegetation- or ground-disturbing activities. CDFW strongly recommends that focused surveys are conducted in accordance with the *Staff Report on Burrowing Owl***	**Timing: Focused surveys:** Consistent with timing in Appendix D of the Staff Report on Burrowing Owl Mitigation and prior to commencement of any Project activities, including vegetation- or ground-disturbing activities for all phases of the Project. **Pre-construction**	**Implementation**: City of Indio and City of La Quinta **Monitoring and Reporting**: City of Indio

Mitigation **(2012 or most recent version)[11]. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and shall submit the results of focused surveys to CDFW and USFWS as soon results become available and before commencement of any Project activities, including any vegetation- or ground-disturbing activities. CDFW recommends that the information included in the survey results be consistent with Appendix D of the *Staff Report on Burrowing Owl Mitigation*, including a detailed map showing locations of all burrowing owls, burrowing owl sign, potential burrows, and occupied burrows (occupied means at least one burrowing owl or its sign has been observed within the last three years; may be indicated by owl sign including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site); a description of the behavior of burrowing owls during surveys; a description of survey methods; and other items listed in Appendix D of the *Staff Report on Burrowing Owl Mitigation* under "Survey Reports." Consultation with CDFW and USFWS must be completed prior to commencement of any Project activities, including vegetation- or ground-disturbing activities. If impacts to occupied burrowing owl habitat or burrow(s) or burrowing owl individuals, nests, or eggs cannot be avoided, appropriate NCCP (Fish and Game Code section 2835) or CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081(b)) should be obtained from CDFW prior to**	**surveys:** No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance for all phases of the Project and when there is a pause in construction of more than 30 days. **Methods:** See Mitigation Measure	

[11] California Department of Fish and Wildlife (CDFW). 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.

commencement of Project activities, including vegetation- or ground-disturbing activities. **Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys shall be performed by a CDFW-approved 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 and the qualified biologist shall coordinate with CDFW and USFWS. Project activities shall not recommence until consultation with CDFW and USFWS is completed.**		
Mitigation Measure BIO-[A]: Surveys for Daytime, Nighttime, Wintering (Hibernacula), and Maternity Roosting Sites for Western Yellow Bat **Prior to commencing Project activities, a CDFW-approved qualified bat biologist shall perform bat habitat/roosting surveys to determine presence of daytime, nighttime, wintering (hibernacula), and maternity roost sites. 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**	**Timing:** Prior to commencement of Project Activities. **Methods:** See Mitigation Measure	**Implementation**: City of Indio and City of La Quinta **Monitoring and Reporting**: City of Indio

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 maternity roosts are identified in the work area or 500 feet extending from the work area, Project construction will only occur between October 1 and February 28, outside of the maternity roosting season when young bats are present but are not yet ready to fly out of the roost. Maternity roosts shall not be evicted, excluded, removed, or disturbed. If active hibernacula are identified in the work area or 500 feet extending from the work area, a minimum 500-foot no-work buffer shall be provided around 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. Hibernacula roosts shall not be evicted, excluded, removed, or disturbed.		
Mitigation Measure BIO-[B]: Avoidance of Bats during Tree Removal **Tree removal work with the potential to house roosting bats shall be performed between September 15 and October 31 to minimize direct impacts to roosting bats. This time period is after young are volant (flying) but before expected onset of torpor (wintering inactivity). Tree removal work may also be conducted between February 15**	**Timing:** See Mitigation Measure. **Methods:** See Mitigation Measure	**Implementation**: City of Indio and City of La Quinta **Monitoring and Reporting**: City of Indio

and March 31, following winter torpor and prior to the start of the maternity season. No tree removals shall occur during the hibernation season, which typically begins in November or December (depending on weather conditions) and continues through mid-February, due to the high potential for mortality of hibernating bats. Depending on weather conditions and the best professional judgement of a qualified bat biologist approved by CDFW, tree removal work may be performed in November if the forecasted nighttime low temperatures on the evening of removal and the subsequent four evenings do not drop below 45˚F. In November, if weather is cold (i.e., forecasted nighttime low temperatures reach 45˚F or less for that evening and the next four evenings), then no tree removals shall be performed. All palm removals shall require a two-step removal process and the involvement of a CDFW-approved qualified bat biologist to ensure that no roosting bats are killed during this activity. The following two-step tree removal process shall be implemented over two consecutive days: on Day 1, live palm fronds located above the frond skirt, and as identified by a qualified bat biologist, will be removed. On Day 2, the remainder of the tree may be removed without supervision by a qualified bat biologist.		
Mitigation Measure BIO-[C]: Artificial Nighttime Lighting **Throughout construction and the lifetime operations of the Project, the Cities of Indio and La Quinta shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most**	**Timing:** Throughout construction and the lifetime operations of the Project **Methods:** See Mitigation Measure	**Implementation**: City of Indio and City of La Quinta **Monitoring and Reporting**: City of Indio

active. The Cities of Indio and La Quinta shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The Cities of Indio and La Quinta shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.		