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GAVIN NEWSOM, Governor
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January 8, 2026
Sent via email

Patricia Villagomez
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Kimana Resort and Spa Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2025120092

Dear Patricia Villagomez:

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

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

CDFW ROLE

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

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: Shayda Ebrahim

Objective: The Project proposes the development of an approximately 5.2-acre site with a resort/spa. Accommodations for 23 rooms will be constructed on-site, in addition to a total of 20 "glamping" units consisting of a combination of airstream trailers and tent units. A reception building, including a coffee bar and hotel restaurant will be provided on site. Two buildings will provide spa therapy and treatment services. Existing structures and landscaping will be removed from the subject site prior to development. The Project will be constructed over four phases with various structures being constructed and others being removed over these phases.

The Project's landscape plan relies on drought tolerant plantings in a desert landscape. All lighting, landscaping, and other features of the proposed development will be consistent with the City's development standards. Potential sources of light may include landscape lighting along pedestrian trails as well as lighting in the parking area and along driveways. All outdoor lighting will be required to comply with the City's outdoor lighting standards, including requirements for shielding and filtering.

Location: The Project site is located in the southeastern portion of the City of Desert Hot Springs, Riverside County, California. The site is located southwest of the southern terminus of Hermano/Quinta Way and west of Yerxa Road/Hidalgo Street. The Project site is located within Accessor's Parcel Numbers 656-150-003 and 642-252-001. The Project site is located within the Coachella Valley Multiple Species Conservation Plan (CVMSHCP) Plan Area and outside of a Conservation Area.

Timeframe: The MND indicates that Project will be constructed over four separate phases, but the MND does not indicate a timeline for these phases.

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 a MND include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support the City in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for bats, Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), and artificial nighttime lighting, as well as revising the mitigation measures for burrowing owl, nesting birds, and CDFW's Lake and Streambed Alteration Program.

1) Nesting Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

With regard to the CVMSHCP, per its associated Implementing Agreement and Permits from CDFW and the U.S. Fish and Wildlife Service (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 13.2, the City is obligated to ensure the projects to which it confers Take Authorization under the CVMSHCP comply with all terms and requirements of the CVMSHCP, the Wildlife Agencies' Permits that create the CVMSHCP, and the Implementing Agreement, including compliance with laws that protect nesting birds.

Based on review of photos included in the Project's Biological Resources Assessment Report (Biological Assessment), dated August 22, 2022, and aerial imagery using Google Earth, CDFW considers the Project site to contain suitable habitat for both ground-nesting birds and birds that nest in shrubs and trees.

The MND includes Mitigation Measure BIO-2 for nesting birds, which indicates that "Project-related disturbance (i.e., grading, vegetation removal or trimming, landscaping, operation of heavy equipment, etc.) either shall be conducted outside of the nesting season (from approximately January 15 through 31 August), or a pre-construction nesting bird clearance survey shall be conducted." 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. CDFW recommends to the greatest extent feasible that initial ground disturbing and vegetation removal activities are conducted outside of the peak nesting bird season to align with the CVMSHCP's general conservation measure for nesting birds (see further above). 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 (Socular et al., 2017²). CDFW staff have observed that climate change conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW 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-2 is revised as follows, with additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-2: Nesting Birds

To the greatest extent feasible, the Project, including each of its Phases, 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 for all Phases of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. ~~Project-related disturbance (i.e., grading, vegetation removal or trimming, landscaping, operation of heavy equipment, etc.) either shall be conducted outside of~~

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.

~~the nesting season (from approximately January 15 through 31 August), or a pre-construction nesting bird clearance survey shall be conducted. The survey shall be conducted by a qualified ornithologist or biologist immediately prior to onsite disturbance during the nesting season. If nesting birds are found, all work shall be halted until young have fledged. CDFW recommended avoidance buffers of about 100-300 feet for unlisted songbirds and 500 feet for listed songbirds and raptors shall be applied.~~

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-2, MM BIO-3, and MM-BIO-4 as well as CDFW-recommended MM BIO-[A], MM BIO-[B], MM BIO-[C], and MM BIO-[D].

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 Implementing Agreement Section 13.2, the City is obligated to ensure the projects to which it confers Take Authorization under the CVMSHCP comply with all terms and requirements of the CVMSHCP, the Wildlife Agencies' Permits that created the CVMSHCP, and the Implementing Agreement, including compliance with laws that protect burrowing owls.

Page 24 of the Project's Biological Assessment indicates that "although burrowing owl, nor sign thereof, was observed or detected onsite during the assessment, suitable habitat and ground squirrel burrows suitable for burrowing owl were present at several locations onsite site (Appendix D, Photo 6). Suitable habitat is also located immediately adjacent to the site in the undeveloped, open space to the west and within the detention basin to the south." The Project site contains suitable nesting and foraging habitat for burrowing owl.

As documented on page 8 of the Biological Assessment, a field assessment was last conducted in summer 2022, and the Biological Assessment lacks details on whether focused surveys for burrowing owl were conducted. Note that CDFW generally considers field assessments for wildlife to be valid for a one-year period due to the potential for site conditions for wildlife to change relatively quickly. For example, new suitable burrows for burrowing owls may be dug by ground squirrels and/or other burrowing mammals, and those burrows may become occupied by burrowing owls. Burrowing owls also frequently move into disturbed areas prior to and during construction activities because they are adapted to highly modified habitats.^{3,4} Because the MND lacks the findings of recent focused surveys for burrowing owl following the guidelines in the *Staff Report on Burrowing Owl Mitigation*,⁵ the number and locations of suitable and occupied burrows within the Project site are unknown. Also, given the lack of results from recent focused surveys for burrowing owl, 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 recent focused surveys for burrowing owl within the entire Project site and

³ Chipman, E. D., N. E. McIntyre, R. E. Strauss, M. C. Wallace, J. D. Ray, and C. W. Boal. 2008. Effects of human land use on western burrowing owl foraging and activity budgets. *Journal of Raptor Research* 42(2): 87-98.

⁴ Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. *Condor* 73:162-176.

⁵ California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

surrounding area, including survey reports,⁶ following the guidelines outlined in Appendix D of the *Staff Report on Burrowing Owl Mitigation* and to incorporate appropriate avoidance, minimization, and mitigation measures for burrowing owl. Recent, focused surveys are needed to inform appropriate avoidance, minimization, and mitigation measures and support the City and Project proponent 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 CDFW and the U.S. Fish and Wildlife Service (Service), and the City initiate consultation with CDFW and the Service to identify a path forward regarding the protection of burrowing owls.

The MND includes Mitigation Measure BIO-3 for burrowing owl. CDFW considers the measure to be inadequate in scope and timing to avoid or reduce impacts to burrowing owl to a level less than significant. For example, CDFW recommends that focused surveys are conducted and that consultation with CDFW and the Service is initiated immediately if burrowing owls are detected during focused surveys, and the results of focused surveys are submitted to CDFW and the Service as soon as the results become available and prior to initiation of any Project activities. Early coordination with CDFW and the Service is important in identifying appropriate avoidance, minimization, and mitigation measures and reducing the chance of Project delays.

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

Mitigation Measure BIO-3: 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, for all Phases of the Project. CDFW strongly recommends that focused surveys are conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version)⁷. If burrowing owls are detected during the focused surveys, the qualified biologist and Project

⁶ 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.

⁷ 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>.

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, for all Phases of the Project. 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, 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.

For all Phases of the Project, 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.

~~Two pre-construction take avoidance surveys for burrowing owl shall be conducted immediately prior to Project construction. The surveys shall comply to CDFW's protocol, as contained in the Staff Report for Burrowing Owl (2012) published by the Department. If burrowing owl are detected on-site, a qualified biologist shall prepare a plan for relocation or avoidance and receive clearance from CDFW and the CVCC prior to implementation of the plan.~~

3) CDFW Lake and Streambed Alteration Program

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.

Page 28 of the MND states that "a boulder-lined drainage, which receives run-off from Hermano Way/Quinta Road, traverses the property from the northeastern corner to the south. A second rock-lined drainage traverses the site from northwest to southeast, and flows through a culvert into the other drainage. Both drainages drain into an existing detention basin located south of the site." The MND includes Mitigation Measure BIO-4, which states "prior to any ground-disturbing activities and prior to the issuance of grading permits, a jurisdictional delineation shall be conducted in order to determine the status of the existing drainages. If the drainages are determined to be jurisdictional waters, then the appropriate permits shall be obtained from the CDFW and/or the USFWS." Through the Lake and Streambed Alteration Program, CDFW determines if an activity may substantially impact a river, lake or stream, and this determination is made by CDFW after a notification is submitted. Given the presence of drainages onsite that will be impacted by the Project and a detention basin located adjacent to the Project site, CDFW recommends the Project proponent notify CDFW's Lake and Streambed Alteration Program.

CDFW recommends the City replace Mitigation Measure BIO-4 the following mitigation measure to a revised MND:

Mitigation Measure BIO-4: CDFW Lake and Streambed Alteration Program

Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

4) Bats

Page 8 of the Biological Assessment indicates that the current "landscaped areas generally consist of planted California fan palms (*Washingtonia filifera*).\" CDFW notes that palm trees are the preferred roost site of western yellow bats, which roost in the attached dead leaf fronds, or "skirts,\" of both native and non-native palm trees. CDFW considers the Project site to contain suitable roosting habitat for western yellow bat. The MND and its supporting documents lack information on the presence of western yellow bat or avoidance, minimization, and mitigation measures for western yellow bat. Without appropriate avoidance, minimization, and mitigation measures, such as surveys to assess presence and appropriate methods to remove fan palms, 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 Bats

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.

Page 18 of the MND states that “existing structures and landscaping will be removed from the subject site prior to development.” The removal of palm trees that contain roosting habitat for bats can subject bats to impacts ranging from permanent loss of day roosts, including maternity roosts, to direct mortality if avoidance, minimization, and mitigation measures are not implemented. To support the City in avoiding or reducing impacts to western yellow bats to less than significant, CDFW also recommends that the following mitigation measure is added to a revised MND:

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.

5) Coachella Valley Multiple Species Habitat Conservation Plan

The Project is located within the CVMSHCP Plan Boundary and contains habitat for Covered Species and/or conserved natural communities. Per CVMSHCP Section 5.2.1.1 and Implementing Agreement Sections 12.2.1 and 13.2, the City is obligated to impose a local development mitigation fee for new development within the Plan Area that impacts vacant land containing Habitat for Covered Species and/or conserved natural communities, including small vacant lots within urban areas that contain natural open space, and to transmit collected fees to the Coachella Valley Conservation Commission at least quarterly and prior to impacts to Covered Species and their Habitats. To document the City's obligation to impose and transmit a Local Development Mitigation Fee for the Project, CDFW recommends the City add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[C]: CVMSHCP Local Development Mitigation Fee

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

6) Artificial Nighttime Lighting

Page 20 of the MND indicates that “potential sources of light may include landscape lighting along pedestrian trails as well as lighting in the parking area and along driveways. All outdoor lighting will be required to comply with the City’s outdoor lighting standards, including requirements for shielding and filtering, as provided in §17.40.170 of the Municipal Code.” The MND lacks additional information on lighting plans. The MND also 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, open-space areas to the south and west of the Project site—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.⁸ Many species use photoperiod cues for communication (e.g., bird song⁹), determining when to begin foraging,¹⁰ behavioral thermoregulation,¹¹ and migration.¹² Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.¹²

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 avoid or 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-[D]: Artificial Nighttime Lighting

⁸ 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.

⁹ Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

¹⁰ Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

¹¹ Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

¹² Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.

Throughout construction and the lifetime operations of the Project, the City shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The City 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.

7) Landscaping

Page 50 of the MND states that the “Project’s landscape plan relies on drought tolerant plantings in a desertscape.” The MND lacks additional information on landscaping such as the use of native plants. CDFW recommends that the MND include recommendations regarding landscaping from Section 4.0 of the CVMSHCP “Table 4-112: Coachella Valley Native Plants Recommended for Landscaping” (pp. 4-180 to 4-182; <https://cvmshcp.org/plan-documents/>). CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants. More information on native plants suitable for the Project location and nearby nurseries is available at CalScape: <https://calscape.org/>. Local water agencies/cities and resource conservation cities in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California’s Save our Water website: <https://saveourwater.com/>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist 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:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
Mitigation Measure BIO-2: Nesting Birds To the greatest extent feasible, the Project, including each of its Phases, 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 for all Phases of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Construction activities may not occur inside the	Timing: No more than three days prior to vegetation removal or ground-disturbing activities. Methods: See Mitigation Measure.	Implementation: City of Desert Hot Springs and Project Proponent Monitoring and Reporting: City of Desert Hot Springs

established buffers, which shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.		
Mitigation Measure BIO-3: 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, for all Phases of the Project. CDFW strongly recommends that focused surveys are conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation (2012 or most recent version)</i>¹³. 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, for all Phases of the Project. CDFW recommends that the information included in the survey results be consistent with Appendix D of the <i>Staff</i>	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 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	Implementation: City of Desert Hot Springs and Project Proponent Monitoring and Reporting: City of Desert Hot Springs

¹³ 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>.

<i>Report on Burrowing Owl Mitigation</i>, 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 <i>Staff Report on Burrowing Owl Mitigation</i> 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, 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. For all Phases of the Project, preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be repeated when there is a pause in construction of more than 30 days. Preconstruction surveys shall be performed by a CDFW-approved qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied	more than 30 days. Methods: See Mitigation Measure.	
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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 Service is completed.		
Mitigation Measure BIO-4: CDFW Lake and Streambed Alteration Program Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.	Timing: Prior to construction and issuance of any grading permit. Methods: See Mitigation Measure.	Implementation: City of Desert Hot Springs and Project Proponent Monitoring and Reporting: City of Desert Hot Springs
Mitigation Measure BIO-[A]: Surveys for Daytime, Nighttime, Wintering (Hibernacula), and Maternity Roosting Sites for Bats 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	Timing: Prior to construction and issuance of any grading permit Methods: See Mitigation Measure	Implementation: City of Desert Hot Springs and Project Proponent Monitoring and Reporting: City of Desert Hot Springs

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 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	Timing: See Mitigation Measure. Methods: See Mitigation Measure.	Implementation: City of Desert Hot Springs and Project Proponent Monitoring and Reporting: City of Desert Hot Springs

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]: CVMSHCP Local Development Mitigation Fee Prior to construction and issuance of any grading permit, the City shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee and transfer of revenues to the Coachella Valley Conservation Commission.	Timing: Prior to construction and issuance of any grading permit. Methods: See Mitigation Measure.	Implementation: City of Desert Hot Springs and Project Proponent Monitoring and Reporting: City of Desert Hot Springs

Mitigation Measure BIO-[D]: Artificial Nighttime Lighting Throughout construction and the lifetime operations of the Project, the City shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.	Timing: Throughout construction and lifetime operations of the Project. Methods: See Mitigation Measure.	Implementation: City of Desert Hot Springs and Project Proponent Monitoring and Reporting: City of Desert Hot Springs
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