STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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October 9, 2026
Sent via email

Lucero Leyva
Senior Project Manager
City of Palm Desert
73510 Fred Waring Drive
Palm Desert, CA 92260
lleyva@palmdesert.gov

Subject: Mid Valley Basin Drainage/Storm Drain Improvements (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2026090497

Dear Lucero Leyva:

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

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those

[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.

species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

PROJECT DESCRIPTION SUMMARY

Proponent: City of Palm Desert

Objective: The Project proposes re-constructing sections of the Mid Valley drainage system infrastructure. The City proposes to regrade and widen the channel. A new underground storm drain will be installed within the Gerald Ford Drive right-of-way. The final component is a proposed basin on approximately four acres of property located between the channel and Gerald Ford Drive. The proposed project has been divided into two phases. Phase 1 of the proposed project will be focused on the Mid Valley Basin, while the new basin and underground storm drain are planned for implementation in Phase 2.

Location: The Project is located in the City of Palm Desert, in the County of Riverside, California, at the cross streets of Cook Street, General Ford Drive, and the Interstate 10 Freeway. The Project is located in Section 34, T4S, R6E, SBBM on the USGS 7.5 Topographic Cathedral City Map, at Latitude 33°78163" N and Longitude 116°35052" W. The Project is located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) Plan Area, and the Project's impact area is located outside of Conservation Areas.

Timeframe: The MND indicates Project activities could start in January 2027.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and

cumulative) on biological resources and whether those impacts are reduced to less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the MND does not adequately identify or mitigate the Project's significant, or potentially significant impacts to biological resources. CDFW requests that additional avoidance, minimization, and mitigation measures are added to a revised MND 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 desert kit fox (*Vulpes macrotis arsipus*) and American badger (*Taxidea taxus*).

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 desert kit fox, American badger, the CVMSHCP (local development mitigation fee), as well as revising the mitigation measures for nesting birds and burrowing owl (*Athene cunicularia hypugaea*).

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.).

The CVMSHCP includes a general conservation measure that applies to all Covered bird species to avoid impacts to their habitat during the nesting season (CVMSHCP Section 9.7).

Regarding the potential for the Project to impact nesting birds, page 33 of the MND states the Project area "may serve as a nursery site for nesting birds." CDFW notes that the Project site and surrounding area contain suitable habitat for birds that nest in trees and shrubs, as well as on the ground.

The MND includes Mitigation Measure BIO-4 for nesting bird surveys, which indicates that "any vegetation removal, grading, trenching or other ground-disturbing activities scheduled during the nesting bird season (generally February 1 through September 15) shall be preceded by a nesting bird survey conducted by a qualified biologist no more than seven (7) days prior to commencement of work." CDFW considers the measure 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. Also, CDFW 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., 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 resident and 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-4 is revised with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-4: Nesting Birds

To the greatest extent feasible, the Project will avoid construction and any ground-disturbing 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 CDFW-approved 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, the 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. Following documentation of baseline conditions, the qualified biologist familiar with the nesting phenology of the nesting species may choose to adjust the buffers based on nest and buffer monitoring results. If the qualified biologist determines that Project activities may be causing an adverse reaction, the qualified biologist shall increase the buffers accordingly. Construction and any ground-disturbing activities may not occur inside the established buffers, which shall remain on-site until the 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.

~~To avoid impacts to active nests of migratory birds, raptors, and other native bird species protected under the federal Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513, any vegetation removal, grading, trenching or other ground-disturbing activities scheduled during the nesting bird season (generally February 1 through September 15) shall be preceded by a nesting bird survey conducted by a qualified biologist no more than seven (7) days prior to commencement of work. The survey shall encompass all areas subject to disturbance and a sufficient surrounding area to identify nests that could be affected by Project activities. If no active nests are found, no further mitigation is required. If an active nest is found, the qualified biologist shall establish a species-appropriate avoidance buffer around the nest. Buffer distances shall be based on the nesting species, sensitivity to disturbance, type and intensity of construction activities, and applicable agency guidance. At a minimum, buffers shall be consistent with current CDFW recommendations. No vegetation removal, grading, equipment operation, or other construction activity shall occur within the established buffer unless the qualified biologist determines that the activity would not result in nest abandonment, reproductive failure, injury, or mortality. The qualified biologist shall monitor active nests and buffer areas at a frequency sufficient to confirm continued nest status and buffer effectiveness throughout the nesting cycle. Buffer boundaries shall be clearly marked in the field and maintained until the qualified biologist determines the young have successfully fledged, the nest has become inactive, or the nest is no longer subject to disturbance from Project activities. Upon making~~

~~such determination, the qualified biologist may authorize removal of the buffer and resumption of construction activities within the previously restricted area.~~

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-1 and MM BIO-4, 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, all Covered Activities within the Plan Area, whether they are located within or outside Conservation Areas, must undertake measures to avoid the take of individuals, nests, and eggs of burrowing owl. CDFW's NCCP Permit #2835-2008-001-06 for the CVMSHCP does not authorize Take of burrowing owl individuals, nests, or eggs. The CVMSHCP also includes a general conservation measure that applies to all Covered bird species, including burrowing owl, to avoid impacts to their habitat during the nesting season (CVMSHCP Section 9.7).

Page 27 of the MND indicates that "there is suitable habitat within the Project Area for burrowing owl." and that "Wildlife species observed or otherwise detected during the survey included […] burrowing owl (*Athene cunicularia*)." CDFW concurs that the Project site and

surrounding areas contain suitable and occupied habitat for burrowing owl. Because burrowing owl has been detected on the Project site, CDFW recommends the City begin coordination with CDFW and USFWS well in advance of Project activities.

The MND includes Mitigation Measure BIO-1 (Burrowing Owl Pre-Construction Surveys), which lacks a requirement to conduct focused surveys. In addition to pre-construction surveys, CDFW recommends focused surveys consistent with the timing and frequency of surveys described in Appendix D of the *Staff Report on Burrowing Owl Mitigation*[2] (Staff Report), or other protocol agreed upon by CDFW, are conducted prior to initiation of Project activities. Focused surveys are needed to provide adequate data to coordinate with CDFW on appropriate avoidance, minimization, and mitigation measures, including the preparation of the burrowing owl plan mentioned in Mitigation Measure BIO-2.. Without requirements to conduct focused surveys for burrowing owl, CDFW considers Mitigation Measure BIO-1 to be inadequate in scope and timing to reduce impacts to burrowing owl to a level less than significant.

The MND also includes Mitigation Measure BIO-2 (Burrowing Owl Mitigation Plan), indicating that "City shall retain a qualified biologist to prepare and implement a Burrowing Owl Mitigation Plan in consultation with CDFW prior to issuance of grading permits or commencement of ground-disturbing activities." CDFW notes that burrowing owl is a Covered Species under the CVMSHCP, and both CDFW and the U.S. Fish and Wildlife Service are permitting agencies for the CVMSHCP. Therefore, CDFW requests that any burrowing owl plan be submitted to both CDFW and the U.S. Fish and Wildlife Service (USFWS) for review and approval prior to commencement of Project activities.

To support the City in avoiding or reducing impacts to burrowing owl to a level less than significant, CDFW recommends that Mitigation Measure BIO-1 is replaced and that Mitigation Measure BIO-2 is revised as follows (with additions in **bold** and removals in ~~strikethrough~~):

Mitigation Measure BIO-1: 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* (*Staff Report*; 2012 or most recent version)[3]. 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

[2] 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

[3] 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.

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*, 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* 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 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.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and again within 24 hours prior to ground disturbance. 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, and CDFW strongly recommends that preconstruction surveys follow the recommendations and guidelines provided in Appendix D of 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 begin until consultation with CDFW and USFWS is completed.

~~Burrowing Owl (BUOW) Pre-Construction Surveys and Avoidance. No more than 3 days prior to any ground disturbance activities, a qualified biologist shall conduct pre-construction BUOW surveys within all areas subject to disturbance and within a minimum 500-foot buffer of the disturbance area, where access is available. Surveys shall be conducted in accordance with the most current California Department of Fish and Wildlife (CDFW) Burrowing Owl Survey Staff Report and any applicable Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) requirements.~~

~~The survey shall identify and map all occupied burrows, suitable burrows, burrowing owl observations, nesting activity, and suitable habitat within and adjacent to the work area. A survey report shall documenting the results shall be provided to the City prior to commencement of ground-disturbing activities. If no burrowing owls or occupied burrows are identified, construction may proceed. If occupied burrows or burrowing owls are identified, then the avoidance and minimization measures identified in BIO-2 shall be implemented. No ground-disturbing activities shall occur within occupied burrowing owl avoidance buffers until the requirements of BIO-2 have been satisfied~~

Mitigation Measure BIO-2 Burrowing Owl Mitigation Plan

If BUOW or occupied habitat are identified within or adjacent to the Project disturbance area, the City shall retain a **CDFW-approved** qualified biologist to prepare and implement a Burrowing Owl Mitigation Plan in consultation with CDFW **and USFWS** prior to issuance of grading permits or commencement of ground-disturbing activities in the affected area. The plan shall include, at a minimum:

- Establishment of avoidance buffers around occupied burrows consistent with current **CDFW, USFWS,** ~~CFDW~~ and CVMSHCP requirements. During the breeding season (February 1 through August 31, or as otherwise determined by **CDFW and USFWS** ~~the qualified biologist based on site conditions~~), no construction activities shall occur within occupied burrow buffers unless otherwise authorized by CDFW **and USFWS**. Avoidance shall be the preferred mitigation strategy.
- Measures to avoid direct mortality, nest abandonment, or reproductive failure of burrowing owls.
- Passive relocation procedures, if avoidance is infeasible, conducted only outside the breeding season and in accordance with current CDFW **and USFWS** guidance.
- Identification of suitable recipient habitat and replacement burrows, including artificial burrows if necessary.
- Monitoring requirements before, during, and after relocation activities to verify successful relocation and continued occupancy of recipient habitat.
- Procedures for adaptive management and corrective actions if relocation efforts are unsuccessful.

No occupied burrows shall be excavated, collapsed, or otherwise disturbed until the qualified biologist verifies that the burrow is unoccupied and all relocation procedures have been completed**, including approval by CDFW and USFWS**. The City shall maintain documentation demonstrating compliance with the approved Burrowing Owl Mitigation Plan, including survey results, monitoring reports, and correspondence with CDFW **and USFWS**.

3) Desert Kit Fox and American Badger

Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, §460) and may not be taken at any time. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. American badger is a California Species of Special Concern. The Project site contains predicted suitable habitat of a high suitability rank for both desert kit fox and American badger, based on California Wildlife Habitat Relationship system Predicated Habitat Models, accessed using CDFW's Biogeographic Information and Observation System. Project activities have the potential to result in harm or direct mortality to desert kit fox and American badger adults and young

through, for example, the destruction of dens and natal burrows. CDFW recommends the MND is revised to include a discussion of the suitability of the Project site to support desert kit fox and American badger. Due to the MND's lack of analysis of potential impacts to desert kit fox and American badger and species-specific avoidance, minimization, and mitigation measures, CDFW considers the MND to be inadequate to reduce impacts to these mammals to a level less than significant.

To support the Project proponent and City in avoiding or reducing impacts to desert kit fox and American badger to a level less than significant, CDFW recommends the following mitigation measures are added to a revised MND:

Mitigation Measure BIO-[A] – Desert Kit Fox

Preconstruction surveys for desert kit fox shall be conducted within 14 days prior to the start of construction by a CDFW-approved qualified biologist. The survey area shall include the Project disturbance areas plus a 500-foot buffer during the breeding season (January 15 through August 31 or until pups are foraging on their own) and a 250-foot buffer outside the breeding season. Pre-construction surveys should include 100-percent visual coverage of the Project area and buffers. Potentially occupied burrows in Project disturbance areas and the survey buffer shall be mapped, and the qualified biologist(s) shall utilize daily on-site monitoring, tracking stations, and wildlife cameras to determine whether the burrows are occupied. If a burrow is determined to be occupied by desert kit fox during the breeding season, the burrow shall be demarcated with a 500-foot buffer and connectivity to adjacent habitat shall be maintained. If a burrow is determined to be occupied outside the breeding season it shall be demarcated with a 250-foot buffer. Burrows determined to be unoccupied shall be demarcated with a 50-foot buffer. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care. The biologist has the authority to halt or stop work if individuals exhibit signs of disturbance. If occupied burrows are found in Project disturbance areas and cannot be avoided, the City and Project proponent shall consult with CDFW on an appropriate path forward. The loss of desert kit fox habitat shall be mitigated at no less than a 2:1 ratio.

Mitigation Measure BIO-[B] – American badger

No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a CDFW-approved qualified biologist(s) shall conduct surveys to determine if potential American badger burrows are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and buffers. If American badger burrows are located, the Project proponent shall have the qualified biologist(s) monitor the burrows using observation and tracking material and/or trail cameras over a three (3) day period to determine the status of the burrow. If non-natal active dens can be avoided and buffered from Project activities, the biologist shall flag a minimum 100-foot disturbance-free buffer zone. A minimum 500-foot disturbance-free buffer shall be placed

around any natal dens and maintained, along with connectivity to adjacent habitat, until juvenile independence is determined by the biologist. The biologist has the authority to halt or stop work if individuals exhibit signs of disturbance. Established buffers shall remain until the biologist determines the young have dispersed or the den is no longer active, or until Project activities cease. If occupied burrows are found in Project disturbance areas and cannot be avoided, the City and Project proponent shall consult with CDFW on an appropriate path forward. The loss of American badger habitat shall be mitigated at no less than a 2:1 ratio.

4) Coachella Valley Multiple Species Habitat Conservation Plan

Local Development Mitigation Fee

The Project is located within the CVMSHCP Plan Boundary and contains habitat for Covered Species and/or conserved natural communities, including burrowing owl (discussed further above). Per the CVMSHCP 6.6.1(page 6-19), the City is obligated to pay a Local Development Mitigation Fee for projects outside Conservation Areas or commit an equivalent dollar value of its lands in the Conservation Areas to permanent Conservation. Per CVMSHCP Section 5.2.1.1, a Local Development Mitigation Fee applies to 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. To document the City's obligation to pay 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, to comply with its obligations under the CVMSHCP, the City of Palm Desert shall pay to the Coachella Valley Conservation Commission a Local Development Mitigation Fee for the Project.

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City 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
84F92FFEEFD24C8...

Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
Mitigation Measure BIO-2: Nesting Birds **To the greatest extent feasible, the Project will avoid construction and any ground-disturbing 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 CDFW-approved 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, the 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. Following documentation of baseline conditions, the qualified biologist familiar with the nesting phenology of the nesting species may choose to adjust the buffers based on nest and buffer monitoring results. If the qualified biologist determines that Project activities may be causing an adverse reaction, the qualified biologist shall increase the buffers accordingly. Construction and any ground-disturbing activities may not occur inside the established buffers, which shall remain on-site until the 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.**	**Timing:** No more than 3 days prior to vegetation removal or ground-disturbing activities. **Methods:** See Mitigation Measure	**Implementation**: City of Palm Desert **Monitoring and Reporting**: City of Palm Desert

Mitigation Measure BIO-1: 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* (*Staff Report*; 2012 or most recent version)[4]. 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*, 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* 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 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.** **Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and again within 24 hours prior to ground disturbance. Preconstruction surveys**	**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. **Pre-construction surveys** No less than 14 days prior to start of Project-related activities and again within 24 hours prior to ground disturbance and when there is a pause in construction of more than 30 days. **Methods:** See Mitigation Measure	**Implementation**: City of Palm Desert **Monitoring and Reporting**: City of Palm Desert

[4] 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.

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, and CDFW strongly recommends that preconstruction surveys follow the recommendations and guidelines provided in Appendix D of 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 begin until consultation with CDFW and USFWS is completed.		
BIO-2 Burrowing Owl Mitigation Plan **If BUOW or occupied habitat are identified within or adjacent to the Project disturbance area, the City shall retain a CDFW-approved qualified biologist to prepare and implement a Burrowing Owl Mitigation Plan in consultation with CDFW and USFWS prior to issuance of grading permits or commencement of ground-disturbing activities in the affected area. The plan shall include, at a minimum:** **• Establishment of avoidance buffers around occupied burrows consistent with current CDFW, USFWS, and CVMSHCP requirements. During the breeding season (February 1 through August 31, or as otherwise determined by CDFW and USFWS), no construction activities shall occur within occupied burrow buffers unless otherwise authorized by CDFW and USFWS. Avoidance shall be the preferred mitigation strategy.** **• Measures to avoid direct mortality, nest abandonment, or reproductive failure of burrowing owls.** **• Passive relocation procedures, if avoidance is infeasible, conducted only outside the breeding season and in accordance with current CDFW and USFWS guidance.** **• Identification of suitable recipient habitat and replacement burrows, including artificial burrows if necessary.** **• Monitoring requirements before, during, and after relocation activities to verify successful relocation and continued occupancy of recipient habitat.** **• Procedures for adaptive management and corrective actions if relocation efforts are unsuccessful.**	**Timing: See Mitigation Measure** **Methods: See Mitigation Measure**	**Implementation: City of Palm Desert** **Monitoring and Reporting: City of Palm Desert**

No occupied burrows shall be excavated, collapsed, or otherwise disturbed until the qualified biologist verifies that the burrow is unoccupied and all relocation procedures have been completed, including approval by CDFW and USFWS. The City shall maintain documentation demonstrating compliance with the approved Burrowing Owl Mitigation Plan, including survey results, monitoring reports, and correspondence with CDFW and USFWS.		
Mitigation Measure BIO-[A] – Desert Kit Fox **Preconstruction surveys for desert kit fox shall be conducted within 14 days prior to the start of construction by a CDFW-approved qualified biologist. The survey area shall include the Project disturbance areas plus a 500-foot buffer during the breeding season (January 15 through August 31 or until pups are foraging on their own) and a 250-foot buffer outside the breeding season. Pre-construction surveys should include 100-percent visual coverage of the Project area and buffers. Potentially occupied burrows in Project disturbance areas and the survey buffer shall be mapped, and the qualified biologist(s) shall utilize daily on-site monitoring, tracking stations, and wildlife cameras to determine whether the burrows are occupied. If a burrow is determined to be occupied by desert kit fox during the breeding season, the burrow shall be demarcated with a 500-foot buffer and connectivity to adjacent habitat shall be maintained. If a burrow is determined to be occupied outside the breeding season it shall be demarcated with a 250-foot buffer. Burrows determined to be unoccupied shall be demarcated with a 50-foot buffer. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care. The biologist has the authority to halt or stop work if individuals exhibit signs of disturbance. If occupied burrows are found in Project disturbance areas and cannot be avoided, the City and Project proponent shall consult with CDFW on an appropriate path forward. The loss of desert kit fox habitat shall be mitigated at no less than a 2:1 ratio.**	**Timing:** Within 14 days prior to the start of construction. **Methods:** See Mitigation Measure	**Implementation**: City of Palm Desert **Monitoring and Reporting**: City of Palm Desert
Mitigation Measure BIO-[B] – American badger **No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a CDFW-approved qualified biologist(s) shall conduct**	**Timing:** No more than 30 days prior to beginning of ground	**Implementation**: City of Palm Desert **Monitoring and Reporting**: City of

surveys to determine if potential American badger burrows are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and buffers. If American badger burrows are located, the Project proponent shall have the qualified biologist(s) monitor the burrows using observation and tracking material and/or trail cameras over a three (3) day period to determine the status of the burrow. If non-natal active dens can be avoided and buffered from Project activities, the biologist shall flag a minimum 100-foot disturbance-free buffer zone. A minimum 500-foot disturbance-free buffer shall be placed around any natal dens and maintained, along with connectivity to adjacent habitat, until juvenile independence is determined by the biologist. The biologist has the authority to halt or stop work if individuals exhibit signs of disturbance. Established buffers shall remain until the biologist determines the young have dispersed or the den is no longer active, or until Project activities cease. If occupied burrows are found in Project disturbance areas and cannot be avoided, the City and Project proponent shall consult with CDFW on an appropriate path forward. The loss of American badger habitat shall be mitigated at no less than a 2:1 ratio.	disturbance and/or construction activities. **Methods:** See Mitigation Measure	Palm Desert
Mitigation Measure BIO-[C]: CVMSHCP Local Development Mitigation Fee **Prior to construction, to comply with its obligations under the CVMSHCP, the City of Palm Desert shall pay to the Coachella Valley Conservation Commission a Local Development Mitigation Fee for the Project.**	**Timing:** Prior to construction **Methods:** See Mitigation Measure	**Implementation**: City of Palm Desert **Monitoring and Reporting**: City of Palm Desert