

Draft Initial Study and Mitigated Negative Declaration

Application for Indian Wells Tennis Gardens Sod Farm Response to Comments

Lead Agency:

City of Indian Wells
Jon Berg, Community Development Director
78200 Miles Avenue
Indian Wells, California 92210
760-200-8400



Prepared by:



MSA Consulting, Inc.
34200 Bob Hope Drive
Rancho Mirage, CA 92270

Comments and Responses to the Comments on the Draft IS/MND

List of Commenters

The following is a list of individuals, representatives, organizations and agencies that submitted written comments on the Draft IS/MND. The City received a total of 1 comment letter from a public agency. **Table 1, *Comment Letters Received on the Draft IS/MND***, provides a list of all comment letters received, from public agencies. **Table 1** lists the ID number assigned to each comment letter, the date it was received, and commenter's name.

Table 1
Comment Letters Received on the IS/MND

<i>State Agencies</i>			
Letter ID	Date	Agency	Commenter
1	November 21, 2022	California Department of Fish and Wildlife	Kim Freeburn

CEQA Requirements Regarding Comments and Responses

CEQA Guidelines, Section 15204(b), outlines parameters for submitting comments on negative declarations. Persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:

1. Identify the specific effect,
2. Explain why they believe the effect would occur, and
3. Explain why they believe the effect would be significant.

CEQA Guidelines, Section 15204(c), further advises that reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.

CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. Lead agencies need to respond to potentially significant issues and do not need to provide all information requested by reviewers if good faith efforts at full disclosure are made in the environmental document.

Responses to Comment Letters

Written comments on the Draft IS/MND are reproduced on the following pages, along with responses to those comments. Changes to the Draft IS/MND text that result from responding to comments are included on the response and noted with an underline in bold for new text and a strikeout for deleted text. The responses were prepared by MSA Consulting, Inc. on behalf of City staff.

Letter 1 – California Department of Fish and Wildlife



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 21, 2022
Sent via email

Jon Berg
Community Development Director
City of Indian Wells
44-950 El Dorado Drive
Indian Wells, CA 92210

Indian Wells Tennis Gardens Parking Lot and Sod Farm Expansion (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2022110009

Dear Mr. Berg:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Indian Wells for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA guidelines¹.

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.

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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.

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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.

Conserving California's Wildlife Since 1870

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.), related authorization as provided by the Fish and Game Code will be required.

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PROJECT DESCRIPTION SUMMARY

Proponent: Garden of Champions, LLC

Objective: The Project proposes to develop a sod grass parking lot for additional parking for the Indian Wells Tennis Gardens (IWTG). The project will be an expansion of the existing IWTG sod grass parking lot facilities immediately to the east. The project will operate as a year-round sod farm with seasonal event parking. The project will provide paved ingress/egress roads, sidewalks, signage, and ride share drop-off/pick-up facilities, located along the project frontage on Miles Avenue. The project site occupies approximately 17 acres south of Miles Avenue and approximately 0.30 miles west of Washington Street in the City of Indian Wells. The Whitewater River is located south and directly adjacent to the Project site.

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Location: The Project site occupies approximately 17 acres south of Miles Avenue and approximately 0.30 miles west of Washington Street in the City of Indian Wells, Riverside County, California. The Project site is located within Assessor's Parcel Number (APN) 604-640-015.

Timeframe: The MND does not include information on a timeframe.

COMMENTS AND RECOMMENDATIONS

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that there is insufficient information in the MND for CDFW to conduct a meaningful review of impacts to biological resources. The MND lacks an accurate description of baseline physical conditions of the Project site; therefore, the MND lacks considerations of the significance of impacts to any special-status plant and animal species that may occupy the site. Without accurate information on baseline physical conditions, CDFW is unable to assess the changes the Project may have on baseline conditions and if these changes are significant. Without this information, CDFW is also unable to provide input on the appropriateness of avoidance, minimization, and mitigation measures. Also, the MND does not discuss the

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Project's potential indirect impacts to biological resources within the Whitewater River, located adjacent to the Project site.

CDFW recommends that the MND is revised to include a complete assessment and analysis of impacts to biological resources. CDFW also recommends that additional avoidance and minimization measures are added to a revised MND to protect burrowing owls, other nesting birds, and other biological resources both within the Project site and within the adjacent Whitewater River.

CDFW offers the comments and recommendations below to assist the City of Indian Wells in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

1) Assessment and Analysis of Impacts to Biological Resources

The MND indicates that the Project site (APN 604-640-015) has been rough graded and stabilized with sod grass. The MND also indicates that the Project site contains no known significant biological resources (pp. 2, 21). The MND does not indicate if a field assessment or any other biological surveys were conducted at the Project site. Aerial imagery from November 2022 and street-level photos accessed via Google Earth Pro indicate that the Project site is not stabilized with sod grass but contains a sparse cover (typical of desert habitats) of vegetation including native plants like creosote bush (*Larrea tridentata*). The California Natural Diversity Database (CNDDDB) indicates historical observations of a number of special-status species within a one-mile radius of the Project site, including, but not limited to, cottonheads (*Nemacaulis denudate* var. *gracilis*; California Rare Plant Rank 2B.2), desert sand-verbena (*Abronia villosa* var. *aurita*; California Rare Plan Rank 1B.1), and Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*; CVMSHCP Covered Species).

Without accurate information on baseline physical condition of the Project site, CDFW is unable to conduct a meaningful review of the Project's impacts on biological resources. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the project, the MND should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

CDFW recommends that the MND is revised to include the following:

1. An assessment of the various habitat types located within the project footprint and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed

following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009²). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.

2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the project site.

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

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² Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. *A manual of California Vegetation*, 2nd ed. California Native Plant Society Press, Sacramento, California. <http://vegetation.cnps.org/>

If the City of Indian Wells forgoes the recommended complete inventory of biological resources and analysis and disclosure of these potential resource impacts in a revised MND, CDFW recommends that the following mitigation measure is added to a revised MND:

Mitigation Measure [A]: Assessment of Biological Resources

Prior to construction or issuance of a grading permit, the Project applicant will submit to the City and CDFW the results of an assessment of biological resources as described below:

A complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory shall address seasonal variations in use of the Project area and shall not be limited to resident species. Focused species-specific surveys, completed by a CVMSHCP Acceptable Biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary.

If any rare, threatened, endangered, and other sensitive species are observed within the Project footprint, the Project applicant will prepare a report for review and approval by the City of Indian Wells and CDFW detailing both actions to avoid and minimize impacts to the species and, for species not covered by the CVMSHCP, a mitigation strategy for all unavoidable impacts to these species that reduces Project impacts to a level that is less than significant.

2) *Burrowing owls*

The MND does not discuss if the Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl (*Athene cunicularia*; California Species of Special Concern and CVMSHCP Covered Species). Burrowing owls have been identified in the Whitewater River upstream and downstream of the Project site, and suitable burrowing owl foraging and/or nesting habitat may exist within the Project site or adjacent to the Project site in the Whitewater River.

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Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. 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.” CDFW recommends that the City of Indian Wells follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012³). The *Staff Report on Burrowing Owl Mitigation*, specifies three steps for project impact evaluations:

- A habitat assessment;
- Surveys; and
- An impact assessment

As stated in the *Staff Report on Burrowing Owl Mitigation*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

CDFW recommends that the MND is revised to include the findings of a burrowing owl habitat assessment, focused surveys, and an impact assessment. If occupied burrows are located within or near the Project site, including the Whitewater River located to the south of the Project site, avoidance and minimization measures need to be identified in the MND to support the Project applicant in avoiding the unlawful take of burrowing owls and their nests and eggs.

CDFW recommends that the following mitigation measure is added to a revised MND:

Mitigation Measure BIO-[B]: Burrowing Owls

³ California Department of Fish and Game (CDFG). 2012. Staff report of burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html

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

If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation*. If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, and minimization. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe the avoidance and minimization actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities.

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3) Nesting Birds

The MND indicates that the Project site contains no known significant biological resources (pp. 2, 21). Aerial imagery from November 2022 and street-level photos accessed via Google Earth Pro indicate that the Project site contains sparse cover of shrubs and trees including, but not limited to, creosote bush (*Larrea tridentata*). Many bird species nest in trees and shrubs, while some birds nest on the ground like killdeer (*Charadrius vociferus*) and others nest in burrows (burrowing owl). Project activities include grading the Project site, which may impact 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.).

To support the Project applicant in avoiding the illegal take of nests, eggs, and nesting birds, CDFW recommends that the following mitigation measure is added to a revised MND:

Mitigation Measures BIO-[C]: Nesting Birds

Nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored

daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

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4) Artificial Nighttime Lighting

The MND indicates that the Project site is located directly adjacent to the Whitewater River, and that Project activities include outdoor lighting plan including both permanent tennis stadium lighting mounted on 90-foot tall steel poles and temporary portable lighting up to 25-foot high for special event parking (pp. 12-13). The MND also indicates that light fixtures will be downward-orientated and may incorporate motion sensors. Examples of lighting fixtures that may be used were also provided.

MND lacks an analysis of direct and indirect impacts that artificial nighttime lighting may have on biological resources located within the Whitewater River. The section of the Whitewater River located adjacent to the Project site contains sparse cover of vegetation cover that may support nesting birds. This section of the Whitewater River may also have suitable burrowing owl nesting habitat. The Whitewater River also serves as an important biological corridor for wildlife. Available research indicates that artificial nighttime 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; and the detection of resources and natural enemies and navigation⁴. Further, many of the effects of artificial nighttime lighting on population or ecosystem-level processes are still poorly known.

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Artificial nighttime lighting within or near the Whitewater River should be avoided completely or minimized by fully shielding all light sources, directing light away from natural areas, reducing light intensity, and lowering the height of all lighting sources, among other strategies to minimize the negative impacts of nighttime lighting. CDFW recommends that the MND be updated to include a discussion of the direct and indirect impacts of artificial lighting expected to adversely affect biological resources in the Whitewater River, as well as migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife. In addition, appropriate avoidance and minimization measures should be included in the IS/MND.

Because of the potential for artificial nighttime lighting used during construction and during operation of the Project to adversely impact biological resources, CDFW

⁴ Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. *The ecological impacts of nighttime light pollution: a mechanistic appraisal*. Biological Reviews, 2013.

recommends that the City of Indian Wells add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[D]: Artificial Nighttime Lighting

During Project construction activities and long-term operations, the Project shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. Ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The height of lightning sources will also be minimized. Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.

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5) CVMSHCP Implementation

The proposed Project occurs within the CVMSHCP Plan Area, is not located within a Conservation Area, and is subject to the provisions and policies of the CVMSHCP. To be considered a covered activity, the Permittees need to demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. Among other obligations under the CVMSHCP, the City of Indian Wells is required to collect Local Development Mitigation Fees and transmit them to the Coachella Valley Conservation Commission. CDFW recommends that the City of Indian Wells add the following mitigation measures to a revised MND:

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Mitigation Measure BIO-[E]: CVMSHCP Compliance

Prior to construction and issuance of any grading permit, the City of Indian Wells 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.

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

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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>.

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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.)

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CONCLUSIONS

CDFW appreciates the opportunity to comment on the MND to assist the City of Indian Wells in identifying and mitigating Project impacts to biological resources. CDFW recommends that a complete assessment of biological resources be completed for the Project to identify baseline biological conditions, including the presence of any special-status species; to assess if the Project will make significant changes to these baseline conditions; and to inform appropriate avoidance, minimization, and mitigation measures. CDFW also recommends that additional avoidance and minimization measures are added to a revised MND to protect burrowing owls, other nesting birds, and other biological resources both within the Project site and within the adjacent Whitewater River. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Environmental Scientist, at jacob.skaggs@wildlife.ca.gov.

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Sincerely,

DocuSigned by:

84F92FFEEFD24C8

Kim Freeburn
Environmental Program Manager

ec:

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

Comments and Responses

Comment 1: *The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Indian Wells for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA guidelines.*

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.

Response 1: The City thanks the CDFW for participating in the review of the Draft MND. In response to this comment letter.

Comment 2: *CDFW Role*

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

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

Response 2: This introductory comment describing the role of CDFW role as a trustee agency does not identify a specific concern or question regarding the adequacy of the MND in identifying and analyzing the potential environmental impacts of the project. For this reason, no further response to this comment is provided.

Comment 3: *Project Description Summary*

Proponent: Garden of Champions, LLC

Objective: The Project proposes to develop a sod grass parking lot for additional parking for the Indian Wells Tennis Gardens (IWTG). The project will be an expansion of the existing IWTG sod grass parking lot facilities immediately to the east. The project will operate as a year-round sod farm with seasonal event parking. The project will provide paved ingress/egress roads, sidewalks, signage, and ride share drop-off/pick-up facilities, located along the project frontage on Miles Avenue. The project site occupies approximately 17 acres south of Miles Avenue and approximately 0.30 miles west of Washington Street in the City of Indian Wells. The Whitewater River is located south and directly adjacent to the Project site.

Location: The Project site occupies approximately 17 acres south of Miles Avenue and approximately 0.30 miles west of Washington Street in the City of Indian Wells, Riverside County, California. The Project site is located within Assessor's Parcel Number (APN) 604-640-015.

Timeframe: The MND does not include information on a timeframe.

Response 3: This comment provides a summary of the project and does not identify a specific concern or question regarding the adequacy of the Draft MND in identifying and analyzing the potential environmental impacts of the project. For this reason, no further response to this comment is provided.

Comment 4: *Comments and Recommendations*

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that there is insufficient information in the MND for CDFW to conduct a meaningful review of impacts to biological resources. The MND lacks an accurate description of baseline physical conditions of the Project site; therefore, the MND lacks considerations of the significance of impacts to any special-status plant and animal species that may occupy the site. Without accurate information on baseline physical conditions, CDFW is unable to assess the changes the Project may have on baseline conditions and if these changes are significant. Without this information, CDFW is also unable to provide input on the appropriateness of avoidance, minimization, and mitigation measures. Also, the MND does not discuss the Project's potential indirect impacts to biological resources within the Whitewater River, located adjacent to the Project site.

CDFW recommends that the MND is revised to include a complete assessment and analysis of impacts to biological resources. CDFW also recommends that additional avoidance and minimization measures are added to a revised MND to protect burrowing owls, other nesting birds, and other biological resources both within the Project site and within the adjacent Whitewater River.

CDFW offers the comments and recommendations below to assist the City of Indian Wells in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Response 4: As addressed in the MND, the site has been rough graded and stabilized with sod grass. Exhibit 1 includes photographs of existing project site conditions, which were used to describe the baseline physical conditions of the project site. As illustrated in Exhibit 1, the existing project conditions are described as disturbed, graded and stabilized, and characterize the baseline physical conditions described in the MND. As addressed in more detail in the responses to the specific comments below, the MND concluded that the project would not result in any significant impacts to biological resources due to these disturbed conditions.

See Response 6 for discussion on the project's potential indirect impacts to biological resources within the Whitewater River, located adjacent to the Project site.

See Responses 5, 6, and 7 for discussion addressing CDFW's recommendations for burrowing owls, other nesting birds, and other biological resources both within the Project site and within the adjacent Whitewater River.

Comment 5: *1) Assessment and Analysis of Impacts to Biological Resources*

*The MND indicates that that the Project site (APN 604-640-015) has been rough graded and stabilized with sod grass. The MND also indicates that the Project site contains no known significant biological resources (pp. 2, 21). The MND does not indicate if a field assessment or any other biological surveys were conducted at the Project site. Aerial imagery from November 2022 and street-level photos accessed via Google Earth Pro indicate that the Project site is not stabilized with sod grass but contains a sparse cover (typical of desert habitats) of vegetation including native plants like creosote bush (*Larrea tridentata*). The California Natural Diversity Database (CNDDDB) indicates historical observations of a number of special-status species within a one-mile radius of the Project site, including, but not limited to, cottonheads (*Nemacaulis denudate* var. *gracilis*; California Rare Plant Rank 2B.2), desert sand-verbena (*Abronia villosa* var. *aurita*; California Rare Plan Rank 1B.1), and Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*; CVMSHCP Covered Species).*

Without accurate information on baseline physical condition of the Project site, CDFW is unable to conduct a meaningful review of the Project's impacts on biological resources. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the project, the MND should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

CDFW recommends that the MND is revised to include the following:

1. *An assessment of the various habitat types located within the project footprint and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance-and/or association-based mapping and assessment be completed following The Manual of California Vegetation, second edition (Sawyer et al. 20092). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.*
2. *A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project.*

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the potential presence of species within the general area of the project site.

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

If the City of Indian Wells forgoes the recommended complete inventory of biological resources and analysis and disclosure of these potential resource impacts in a revised MND, CDFW recommends that the following mitigation measure is added to a revised MND:

Mitigation Measure [A]: Assessment of Biological Resources

Prior to construction or issuance of a grading permit, the Project applicant will submit to the City and CDFW the results of an assessment of biological resources as described below:

A complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory shall address seasonal variations in use of the Project area and shall not be limited to resident species. Focused species-specific surveys, completed by a CVMSHCP Acceptable Biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary.

If any rare, threatened, endangered, and other sensitive species are observed within the Project footprint, the Project applicant will prepare a report for review and approval by the City of Indian Wells and CDFW detailing both actions to avoid and minimize impacts to the species and, for species not covered by the CVMSHCP, a mitigation strategy for all unavoidable impacts to these species that reduces Project impacts to a level that is less than significant.

Response 5: The online imagery observed by the Department is outdated. Please see Exhibit 1 for current images of the project site. The photographs were taken November 22, 2022 at the project's northwest, northeast, and southeast corners. Per the photographs, and as described in the MND, the site has been graded and is stabilized with sod grass. Thus, sparse cover (typical of desert habitats) of vegetation including native plants like creosote bush is not on the property. Additionally, special-status species established by the CNDDDB do not occur onsite. Moreover, the property does not include rare, threatened, endangered, and other sensitive species onsite.

Considering the existing project site conditions, the following is not necessary:

1. An assessment of the various habitat types within the project footprint and map;
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project.
3. A complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the project footprint and within offsite areas with the potential to be affected.

Additionally, due to the existing site conditions, the mitigation recommended by the CDFW regarding an assessment and analysis of impacts to biological resources is not necessary.

Comment 6: 2) *Burrowing Owls*

*The MND does not discuss if the Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl (*Athene cunicularia*; California Species of Special Concern and*

CVMSHCP Covered Species). Burrowing owls have been identified in the Whitewater River upstream and downstream of the Project site, and suitable burrowing owl foraging and/or nesting habitat may exist within the Project site or adjacent to the Project site in the Whitewater River.

Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. 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.” CDFW recommends that the City of Indian Wells follow the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation (CDFG 20123). The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

- *A habitat assessment;*
- *Surveys; and*
- *An impact assessment*

As stated in the Staff Report on Burrowing Owl Mitigation, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

CDFW recommends that the MND is revised to include the findings of a burrowing owl habitat assessment, focused surveys, and an impact assessment. If occupied burrows are located within or near the Project site, including the Whitewater River located to the south of the Project site, avoidance and minimization measures need to be identified in the MND to support the Project applicant in avoiding the unlawful take of burrowing owls and their nests and eggs.

CDFW recommends that the following mitigation measure is added to a revised MND:

Mitigation Measure BIO-[B]: Burrowing Owls

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

If the habitat assessment demonstrates suitable burrowing owl habitat, then focused burrowing owl surveys shall be conducted by a qualified biologist according to the Staff Report on Burrowing Owl Mitigation. If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance,

monitoring, relocation, and minimization. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe the avoidance and minimization actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities.

Response 6: As described in the MND and indicated in Exhibit 1, the project site is heavily disturbed, and does not contain suitable habitat for burrowing owls. However, the MND included a pre-construction survey as a mitigation measure because burrowing owls were identified on the adjacent Tennis Garden site. Therefore, with mitigation, the MND determined that less than significant impacts are anticipated from the implementation of the project.

Additionally, the Whitewater Channel is maintained by CVWD by periodic dredging to manage flood control drainage. This is done to keep vegetation out of the Channel which would otherwise restrict stormwater flows during storm events, and ensure the associated debris and vegetation is not carried downstream clogging culverts and drop-structures, etc. This maintenance activity from CVWD occurs periodically and removes any temporary nesting bird habitat “desert scrub vegetation” from the Channel.

With the foregoing, a project impact evaluation, which involves a habitat assessment, surveys, and an impact assessment, is not necessary. However, Mitigation Measure BIO-1, as outlined in the MND, required a preconstruction survey prior to any ground disturbance. Mitigation Measure BIO-1 has been revised to state the following, per CDFW’s request:

“BIO-1: A pre-construction survey shall be conducted on the project site no less than 14 ~~within 30~~ days prior to the start of any project-related activities and within 24 hours

prior to ground disturbance to avoid a direct take of burrowing owls (BUOW), in accordance with the Staff Report on Burrowing Owl Mitigation (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation. The qualified biologist shall coordinate with and submit a Burrowing Owl Plan to the CDFW for review and approval prior to commencing project activities. The qualified biologist conducting the ~~30-day~~ pre-construction BUOW survey must submit a letter report to the City of Indian Wells documenting the results of the survey.”

Comment 7: 3) Nesting Birds

*The MND indicates that the Project site contains no known significant biological resources (pp. 2, 21). Aerial imagery from November 2022 and street-level photos accessed via Google Earth Pro indicate that the Project site contains sparse cover of shrubs and trees including, but not limited to, creosote bush (*Larrea tridentata*). Many bird species nest in trees and shrubs, while some birds nest on the ground like killdeer (*Charadrius vociferus*) and others nest in burrows (burrowing owl). Project activities include grading the Project site, which may impact 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.).

To support the Project applicant in avoiding the illegal take of nests, eggs, and nesting birds, CDFW recommends that the following mitigation measure is added to a revised MND:

Mitigation Measures BIO-[C]: Nesting Birds

Nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting

phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

Response 7: As described in the MND and indicated in Exhibit 1, the project site is heavily disturbed, graded, and includes irrigated turf to stabilize dust blowing from the site. The project site does not contain sparse cover of shrubs and trees. Additionally, as stated in Response 5, the Whitewater Channel is maintained by CVWD by periodic dredging to manage flood control drainage. This is done to keep vegetation out of the Channel which would otherwise restrict stormwater flows during storm events, and ensure the associated debris and vegetation is not carried downstream clogging culverts and drop-structures, etc. This maintenance activity from CVWD occurs periodically and removes any temporary nesting bird habitat “desert scrub vegetation” from the Channel. The graded and active site does not provide nesting habitat for bird species. As stated on page 22 of the MND, past disturbance of the site makes it unlikely that the site serves as a migratory wildlife corridor or a native wildlife nursery site. Therefore, the project would not result in the take of any migratory bird under the Migratory Bird Treaty Act. However, as stated above, the project proponent shall conduct a preconstruction survey prior to any ground disturbance to avoid a direct take of burrowing owls (Mitigation Measure BIO-1).

Comment 8: 4) *Artificial Nighttime Lighting*

The MND indicates that the Project site is located directly adjacent to the Whitewater River, and that Project activities include outdoor lightning plan including both permanent tennis stadium lightning mounted on 90-foot tall steel poles and temporary portable lightning up to 25-foot high for special event parking (pp. 12-13). The MND also indicates that light fixtures will be downward-orientated and may incorporate motion sensors. Examples of lightning fixtures that may be used were also provided.

MND lacks an analysis of direct and indirect impacts that artificial nighttime lightning may have on biological resources located within the Whitewater River. The section of the Whitewater River located adjacent to the Project site contains sparse cover of vegetation cover that may support nesting birds. This section of the Whitewater River may also have suitable burrowing owl nesting habitat. The Whitewater River also serves as an important biological corridor for wildlife. Available research indicates that artificial nighttime 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; and the detection of resources and natural enemies and navigation⁴. Further, many of the effects of artificial nighttime lightning on population or ecosystem-level processes are still poorly known.

Artificial nighttime lightning within or near the Whitewater River should be avoided completely or minimized by fully shielding all light sources, directing light away from natural areas, reducing

light intensity, and lowering the height of all lightning sources, among other strategies to minimize the negative impacts of nighttime lightning. CDFW recommends that the MND be updated to include a discussion of the direct and indirect impacts of artificial lighting expected to adversely affect biological resources in the Whitewater River, as well as migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife. In addition, appropriate avoidance and minimization measures should be included in the IS/MND.

Because of the potential for artificial nighttime lighting used during construction and during operation of the Project to adversely impact biological resources, CDFW recommends that the City of Indian Wells add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[D]: Artificial Nighttime Lighting

During Project construction activities and long-term operations, the Project shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. Ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The height of lightning sources will also be minimized. Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler.

Response 8: The MND states that the Indian Wells Tennis Gardens currently consists of permanent tennis stadium and practice court lights mounted on 90-foot tall steel poles, and temporary portable lighting up to 25-feet high used on sod grass overflow parking areas. These lights are existing and operate as part of the offsite Tennis Garden stadium facilities and are not proposed as part of the project.

The permanent lighting proposed for the project will only be installed along the entryway and new rideshare lane on Miles Avenue. The lights will be motion detected lighting and only used during the BNP Paribas tennis tournament in April (for 3 weeks). The parking lot lighting in the turf area will be portable temporary lights, as are currently used during the BNP Paribas tournament in the adjacent existing turf parking lot immediately to the east (also not permanent). Exhibit 2 has been included to illustrate the Photometric Plan for the proposed project. The photometric exhibit indicates that the foot candles are 0.0 at the interface of the project's entry road and the Whitewater River stormwater channel. Therefore, the proposed lighting for the project would not result in nighttime lighting within or near the Whitewater River channel, and revisions to the MND or mitigation is not necessary.

Comment 9: 5) CVMSHCP Implementation

The proposed Project occurs within the CVMSHCP Plan Area, is not located within a Conservation Area, and is subject to the provisions and policies of the CVMSHCP. To be considered a covered activity, the Permittees need to demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. Among other

obligations under the CVMSHCP, the City of Indian Wells is required to collect Local Development Mitigation Fees and transmit them to the Coachella Valley Conservation Commission. CDFW recommends that the City of Indian Wells add the following mitigation measures to a revised MND:

Mitigation Measure BIO-[E]: CVMSHCP Compliance

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

Response 9: As stated in the MND, the project is not in a Conservation Area and the City, as a participant in the MSHCP, is required to comply with all relevant CVMSHCP policy. This includes the payment of fees. Pages 21 and 22 of the MND required that the project implement these fees. These fees are collected at issuance of Building Permits as a Standard Condition, however, to satisfy the CDFW’s request, the mitigation above will be included in the MND.

“BIO-2: Prior to construction and issuance of any grading permit, the City of Indian Wells 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.”

Additionally, previous onsite disturbance was required to pay all development impact fees, including the CVMSHCP Local Development Mitigation Fee.

Comment 10: 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>.

Response 10: The City thanks the Department for this information. However, due to the disturbed character of the project site, special status species and natural communities are not located on the project site. See Exhibit 1, and above responses.

Comment 11: 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.)

Response 11: The City thanks the Department for this information. As a standard Condition of Project Approval, the project proponent shall comply with filing environmental document filing fees compliant with Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.

Comment 12: *Conclusions*

CDFW appreciates the opportunity to comment on the MND to assist the City of Indian Wells in identifying and mitigating Project impacts to biological resources. CDFW recommends that a complete assessment of biological resources be completed for the Project to identify baseline biological conditions, including the presence of any special status species; to assess if the Project will make significant changes to these baseline conditions; and to inform appropriate avoidance, minimization, and mitigation measures. CDFW also recommends that additional avoidance and minimization measures are added to a revised MND to protect burrowing owls, other nesting birds, and other biological resources both within the Project site and within the adjacent Whitewater River. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Environmental Scientist, at jacob.skaggs@wildlife.ca.gov.

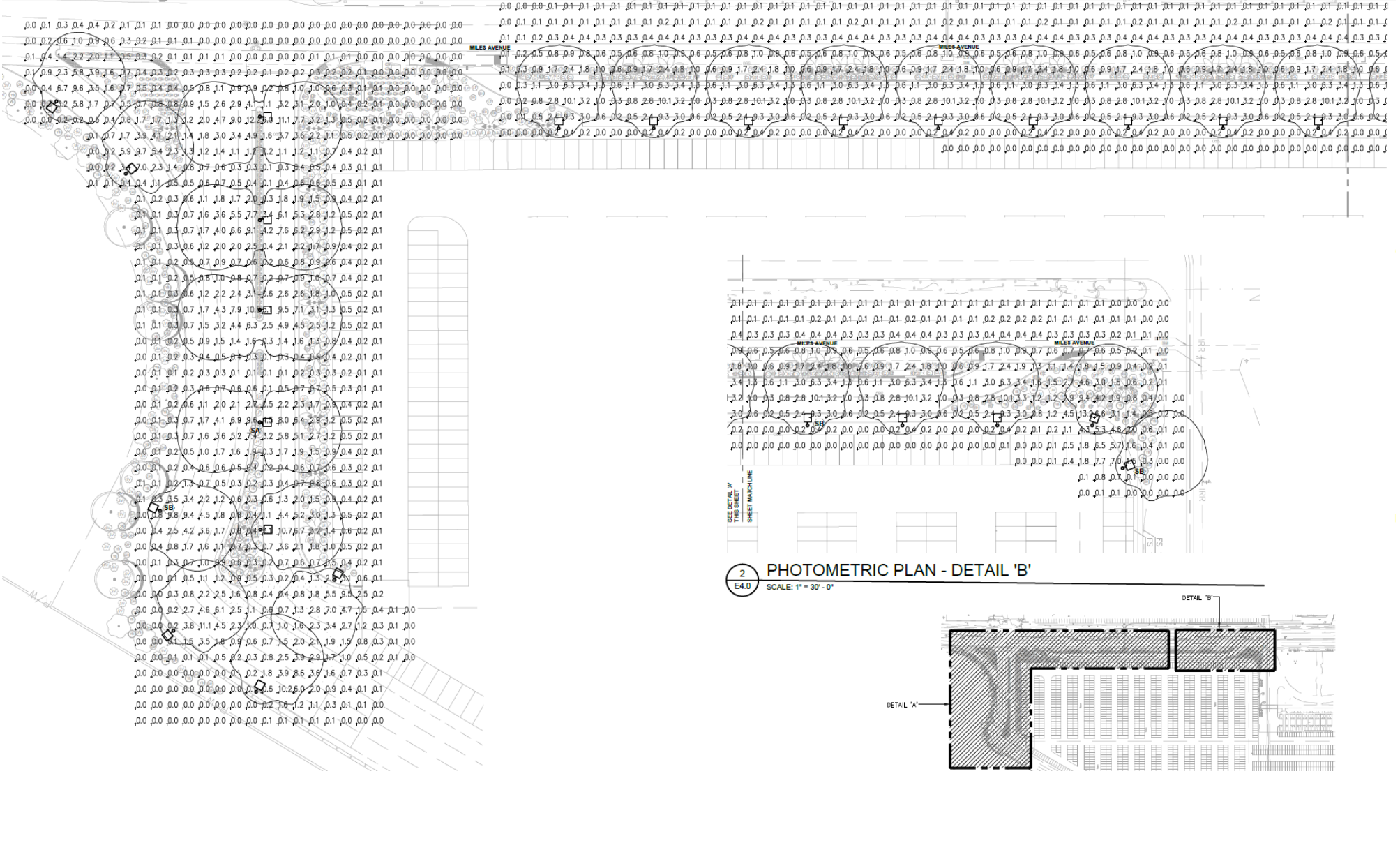
Response 12: The City thanks the Department for their participation in this process. This comment summarizes and concludes the Department's letter. No additional response required.











2 PHOTOMETRIC PLAN - DETAIL 'B'
E40 SCALE: 1" = 30' - 0"

