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MEMORANDUM OF UNDERSTANDING
Between the
California Department of Fish and Wildlife
and the
Coachella Valley Conservation Commission
for
Completion of Certain Actions on the Mirage Trail within the Magnesia Spring Ecological Reserve in Riverside County

This Memorandum of Understanding ("MOU") is entered into between the California Department of Fish and Wildlife ("CDFW") and the Coachella Valley Conservation Commission ("CVCC") (collectively the "Parties") for the implementation of certain actions necessary to allow the upper portion of the Mirage Trail located within the CDFW Magnesia Spring Ecological Reserve (described herein as "the Trail") in Riverside County to be open for nine months of the year.

RECITALS

WHEREAS, CDFW is a public agency of the State of California and is the trustee agency for the State's biological resources; and

WHEREAS, CVCC is a joint powers authority responsible for implementing the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan ("CVMSHCP"); and

WHEREAS, AB 880 approved by the Governor and filed by the Secretary of State on September 25, 2012, requires the Trail to be open nine months of the year to recreational hiking, if the Fish and Game Commission ("Commission") determines that certain conditions relating to Peninsular bighorn sheep are met; the bill would also require the Commission to determine seasonal openings and closures of the trail that will not conflict with the use of the area by Peninsular bighorn sheep; and

WHEREAS, subsequently AB 1097 was approved by the Governor and filed by the Secretary of State on October 5, 2013, which requires the Commission to determine that an additional condition is met and would specify the months of the year that the trail would be open as May to January, inclusive, and the 3 months that the trail would be closed as February to April, inclusive; and

WHEREAS, AB 880 and AB 1097 call for the Mirage Trail to be open nine months of the year to recreational hiking, if the Commission determines that all of the following conditions are met:

(1) Local public agencies or other non-state entities will assume complete financial responsibility for the following as determined to be necessary by the Commission:
   a. Fencing to dissuade hikers from traversing beyond the Trail and into sensitive Peninsular bighorn sheep habitat.
   b. Signage and educational materials to educate hikers about Peninsular bighorn sheep; and

(2) A single entity has been designated to fulfill the financial arrangements and other terms and conditions determined by the Commission to be necessary pursuant to paragraph (1).

(3) Pursuant to AB 1097, an additional condition requires that the entity designated pursuant to paragraph (2) has committed to expend at least one hundred thousand dollars ($100,000) by January 1, 2018, to monitor the Peninsular bighorn sheep, consistent with the Coachella Valley Multiple Species Habitat Conservation Plan.

WHEREAS CDFW is not required by this legislation to provide funding; and

WHEREAS, CVCC is qualified to serve as that entity to satisfy implementation of the terms and conditions in paragraphs (1), (2), and (3); and

WHEREAS, CDFW and CVCC desire to cooperate and define their respective responsibilities in the implementation of AB 880 and AB 1097;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. EFFECTIVE DATE: This MOU is effective as of this 20th day of February, 2014, having been executed by both Parties. This MOU may be executed in counterpart.

2. JOINT RECOMMENDATION TO THE COMMISSION: The Parties agree that the obligations set forth in this MOU are intended to satisfy the requirements of AB 880 and AB 1097. The Parties agree to jointly request that the Commission adopt a regulation approving the opening of the trail for nine months of the year consistent with AB 880 and AB 1097, and that the Commission include CVCC's obligations as provided herein as an enforceable part of any regulation adopted to open the Trail. The Parties agree that any such regulation will state that CVCC's failure to comply with the obligations as stated in the regulation will result in the closure of the Trail, unless another entity acceptable to CDFW agrees to assume full responsibility for these obligations.

The Parties agree that until the Commission has established all obligations for required fencing, signage and educational materials, CVCC cannot accept final responsibility for these obligations. If necessary, the Parties will reconsult on this MOU following the Commission decision to confirm that obligations imposed by the Commission are acceptable.

3. DESCRIPTION OF TRAIL: The trail is within CDFW's Magnesia Spring Ecological Reserve and is within the Santa Rosa and San Jacinto Mountains Conservation Area of the CVMSHCP.

A. LOCATION: The Trail is located within the State of California, County of Riverside, more particularly described as falling within a portion of Section 24, Township 5S, Range 5E, as defined on a USGS Topographic map.

4. CVCC RESPONSIBILITIES: While CVCC may coordinate with CDFW, the CVMSHCP Trails Management Subcommittee, trail user groups, and others as appropriate, CVCC will be responsible for implementation of the following terms and conditions:

A. FINANCIAL MANAGEMENT: CVCC accepts and assumes full financial responsibility (See Exhibit A for the scope and budget.) Among other management tasks, CVCC may collect and manage funds, as well as provide financial oversight, for the installation and maintenance of fencing and signage and for educational materials developed as a result of this agreement, or as the Commission may determine to be necessary. CVCC intends to work with the Trails Management Subcommittee, trail user groups, and CVCC member agencies to raise all necessary funds to complete the actions herein. However,

CVCC's commitment in this MOU is to accept and assume full financial responsibility notwithstanding any fundraising success or failure.

B. SIGNAGE: CVCC will coordinate with CDFW to design, install and maintain signage around the perimeter of the overlook area at the terminus of the upper portion of the Trail ("overlook area"), as appropriate, with signs based on CDFW's departmental standards and consistent with the CVMSHCP, or as otherwise required by the Commission.

C. FENCING: CVCC will coordinate with CDFW to design, install and maintain fencing as determined by the Commission, to discourage trail activity beyond the terminus of the Trail.

D. OUTREACH AND EDUCATION: CVCC will coordinate with volunteers from the CVMSHCP Trails Management Subcommittee and others to develop interpretive, educational information, in addition to signage as described in B above, about bighorn sheep habitat and protection of the ecosystem. This outreach may include an interpretive panel to be installed along the northern edge of the overlook area or other location determined by mutual agreement of CDFW and CVCC, as well as other educational materials determined to be necessary by the Commission.

E. VOLUNTEER SUPPORT: CDFW and CVCC welcome volunteer support in the implementation of the terms and conditions of this agreement, including financial contributions to CVCC. Through outreach to the Trails Management Subcommittee, and to trail user groups including local hiking clubs, CVCC will encourage volunteers to help install, maintain, and replace as needed, fencing and signage, and to assist with educational materials and outreach to educate hikers about Peninsular bighorn sheep and the need to protect vegetation, soils and the desert ecosystem.

F. COOPERATION WITH THE CITY OF RANCHO MIRAGE: CVCC agrees to cooperate with CDFW to work with the City of Rancho Mirage to allow CDFW vehicular access through the City's locked gate at the end of Desert Drive.

5. CDFW RESPONSIBILITIES: CDFW will undertake and be responsible for all of the following:

A. SIGNAGE: CDFW will coordinate with CVCC to approve the location for signage along the Trail with signs based on CDFW's departmental standards and consistent with the CVMSHCP, or as otherwise required by the Commission.

B. MAINTENANCE: CDFW will coordinate with CVCC and may advise and assist CVCC regarding the long-term maintenance of fencing, signage, or educational materials installed as a result of this agreement. However, CVCC will be responsible for obtaining the necessary funds to support the costs of such maintenance.

6. GENERAL PROVISIONS:

A. MUTUAL COMMITMENT: CVCC and CDFW agree to work together and share a mutual commitment to jointly implementing AB 880 and AB 1097 as outlined in this MOU. This general mutual commitment is based on the expectation of each Party that the other will fulfill all the responsibilities it assumes in this agreement. If one Party believes that the other Party may fail or has failed to fulfill all of its obligations contained

herein, the Parties shall promptly meet in an effort to resolve the alleged failure such that both Parties agree to continue to fulfill all of their obligations contained herein.

B. COMPLETE AGREEMENT: This MOU contains the complete agreement of CDFW and CVCC in regards to the subject matter of this MOU and there are no other agreements, oral or written except as are included within the terms of this MOU. Any amendments or clarifications to this MOU must be in writing executed by both Parties.

C. SEVERABILITY: Should any provision of the MOU be found to be void or unenforceable, it shall be severable from the rest of the MOU and the remaining terms shall be enforced as if the unenforceable term had not existed.

D. MUTUAL DRAFTING: This MOU shall be deemed to have been drafted by both Parties, with each having equal say and status. In no event shall any term be interpreted more favorably as to one Party or the other.

E. TERM: This MOU shall remain in effect until January 1, 2018, the date AB 880 expires, unless the Legislature deletes or extends that date, and CVCC and CDFW mutually agree to extend this MOU. This MOU may also be terminated at any time by mutual written agreement of the PARTIES.

F. LIMITATIONS: Except as specified in the MOU, or in any Commission decision, nothing in this MOU shall be construed as giving either CDFW or CVCC the right or ability to bind the other or create any joint liability as regards the activities under this MOU. Nothing herein shall be construed as obligating the Parties to expend or be involved in any contract or other obligation for the future payment of money in excess of the appropriations authorized by law and administratively allocated for these projects.

G. RECITALS AND EXHIBITS: The above recitals and all attached exhibits are incorporated herein by this reference.

H. THIRD PARTY BENEFICIARIES: Nothing in this MOU shall be construed to confer any rights upon any party not a signatory to this MOU.

I. PRIVILEGES AND IMMUNITIES: Notwithstanding anything to the contrary in the MOU, neither Party waives any of the privileges and immunities from liability, exemptions from laws, ordinances and rules, or any pension, relief, disability, worker's compensation and/or any other benefits which apply to the activity of officers, agents or employees of either Party.

David Elms
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Acting Regional Manager

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Executive Director
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