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GAVIN NEWSOM, Governor
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April 18, 2022
Sent via email

Governor's Office of Planning & Research

Apr 19 2022

STATE CLEARINGHOUSE

Jim Morrissey, Contract Planner
County of San Bernardino
385 N. Arrowhead Ave.
Land Use Services Department, 1st Floor
San Bernardino, CA 92415

Subject: Initial Study and Mitigated Negative Declaration
Resort Camping Proj-2020-00191
State Clearinghouse No. 2022030476

Dr. Mr. Morrissey,

The California Department of Fish and Wildlife (CDFW) received an Initial Study/ Mitigated Negative Declaration (ISMND) from the County of San Bernardino (County) for the Resort Camping Proj-2020-00191 (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

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.

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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.

ASSEMBLY BILL (AB) 819

Assembly Bill (AB) 819 was signed into law by Governor Gavin Newsom on July 16, 2021, and became effective January 1, 2022. AB 819 requires lead agencies to submit certain environmental documents and notices electronically to the State Clearing House (SCH) at Office of Planning and Research (OPR). Thus, as of January 1, 2022, lead agencies must take the following actions to comply with CEQA:

- File on CEQAnet – Draft Environmental Impact Reports (DEIR), proposed Negative Declarations (ND), proposed Mitigated Negative Declarations (MND) must be filed electronically on CEQAnet (<https://ceqanet.opr.ca.gov/>) – as opposed to submitting hard copies.
- Post on Agency website – Draft, proposed, and final environmental documents – including DEIRs, EIRs, NDs, MNDs – as well as any Notice of Preparation (NOP), Notice of Determination (NOD), Notice of Completion, or Notice of Scoping Meetings must be posted on the lead agency's website if it has one. Also, Notices of Availability (NOAs) and hearings related to the DEIR or ND are required to be posted on the lead agency's website, in addition to prior methods of giving notice.
- File and Post with County – NODs must be filed electronically with the county clerk if electronic filings are offered by the county. There is an option to post NODs either in the county clerk's office or on the county clerk's website for a period of 30 days. Additionally, NOPs and NOAs will need to be posted on the county clerk's website and physically, by hard copy, in the county clerk's office.
- Option to email NOPs – If an EIR is required, any NOP may be emailed, rather than mailed, to each entity requiring personal notice – the responsible agency, any public agency with jurisdiction over natural resources affected by the project, and OPR.
- State Agency Filings – State lead agencies are required to file NODs and NOEs electronically on CEQAnet and no longer need to submit hard copies. The filed notice must be available for public inspection on the OPR website for not less than 12 months.
- Public Agency Notice of Completion – Public agencies must file notices of completion on CEQAnet, rather than mailing a paper copy.

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PROJECT DESCRIPTION SUMMARY

The Project site is in the City of Landers, San Bernadino County, California; Latitude 34.215050 N and Longitude -116.430806 W. The Project site is bounded on the west by Old Woman Springs Road, on the north by Luna Vista Road, on the east by Sage Avenue, and on the south by La Brisa Drive. The Project proposes the development of 25 acres for a destination resort that includes: a campground, a restaurant, a bar, a retail store, trails, gardens, a sewage disposal area, and recreation buildings on Assessor's Parcel Number (APN) 0629-181-01-0000, which totals approximately 640 acres.

Timeframe: Unavailable

COMMENTS AND RECOMMENDATIONS

CDFW offers the mitigation measures presented below along with comments and recommendations to assist the County in adequately mitigating the Project's potentially significant impacts on western Joshua tree (*Yucca brevifolia*), desert tortoise (*Gopherus agassizii*), nesting birds, burrowing owl (*Athene cunicularia*), special-status plants, and Fish and Game Code section 1602 resources. CDFW requests that the County adopts the mitigation measures listed below and also found in Attachment 1 (Mitigation Monitoring and Reporting Program).

Assessment of Biological Resources

Western Joshua Tree (*Yucca brevifolia*)

As a Candidate for Threatened California Endangered Species Act (CESA)-listed species, CDFW is concerned with the Project's potential impacts to hundreds of western Joshua trees (WJT).

Based on Figure 6 "Joshua Tree Locations" of the Biological Resource Assessment (BRA), CDFW estimates the presence of over 200 hundred WJT on the mere 25 acres surveyed of APN 0629-181-01-0000, which totals 640 acres. The number of WJT is likely to exceed those depicted on Figure 6, since the survey to quantify WJT involved a walkthrough of only 25 acres versus focused surveys on the entirety of APN 0629-181-01-0000 (640 acres). CDFW understands that only 25 acres are proposed for development; however, when analyzing impacts to WJT, the entire population on the Project site should be considered to properly calculate demographics and estimate the quality of WJT habitat on-site. CDFW recommends that a final MND (termed hereafter as 'final MND') quantifies WJT presence on the entirety of APN 0629-181-01-0000 through focused surveys. The WJT survey results should be included in the final MND and should identify and provide: a) the GPS coordinates and accompanying map of each WJT within the Project area; b) the age class of each WJT; c) the number of clonal WJT associated with each parent plant and the methodology used to make this

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determination; d) a unique numbering system for each WJT, and e) geo-referenced, representative photos of parent trees, clones, and general distribution of WJT across the Project site. Furthermore, the final MND should include: 1) an impact analysis assessing potential Project impacts to WJT within a 186-foot buffer zone of WJT (Vander Wall et al. 2006), 2) implementing a 300-foot buffer around WJT not scheduled for removal to avoid impacts to WJT, and 3) a mitigation strategy for Project impacts to WJT individuals, WJT seedbank, and indirect impacts to WJT. Indirect impacts to WJT include destruction of WJT's obligate pollinating moth (yucca moth; *Tegeticula synthetica*), while it is dormant in the soil or while it is in its flight phase, which would impact the ability of WJT to sexually recruit new individuals (Sweet et al. 2019). Destruction or modification of WJT habitat in the Project area could also disrupt the seed dispersal behavior of rodents, which is the primary way that WJT seeds are buried at a soil depth suitable for successful germination (Waitman et al. 2012). Destruction or modification of WJT habitat in the Project area could also eliminate nurse plants that are critical for WJT seedling survival (Brittingham and Walker 2000).

CDFW requests the final MND 1) adequately identify and disclose the Project's impacts (i.e., direct, indirect, and cumulative) to WJT as noted above, 2) propose mitigation to offset those impacts to WJT, and 3) demonstrate that impacts to WJT are less than significant and, for the purposes of CESA permitting, are fully mitigated. Further, CDFW recommends the following revisions to biological (BIO) mitigation measures (MM) one (MM BIO-1), MM BIO-7, and MM BIO-8, pertaining to WJT (edits are in ~~strikethrough~~ and **bold**):

MM BIO-1

Joshua trees shall be protected to comply with the County of San Bernardino Development Code Chapter 88.01.050 through transplantation and stockpiling, and implementation of protective measures as recommended in the Protected Plant Preservation Plan prepared in October 2021 for the proposed Project. Additionally, prior to the implementation of the recommended measures outlined in the Protected Plant Preservation Plan, **and prior to "take" of any western Joshua tree (WJT; a Candidate for listing as threatened under the California Endangered Species Act (CESA)) an CESA Incidental Take Permit (ITP) (Individual Take Permit)** shall be obtained from the California Department of Fish and Wildlife (CDFW) ~~for any Joshua Tree on-site to be removed from its current position as deemed applicable by the CDFW. A Habitat Assessment Plan will be prepared at the direction of CDFW. The approved Plan will serve as the Basis of the final Protected Plant Preservation Plan for use by the County.~~ **California Fish and Game Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill". Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection of WJT through**

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establishment of a conservation easement, development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed or financial security must be provided before starting any Project activities. In order to execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof that the document has been circulated.

MM BIO-7

To meet the requirements of the Plant Protection and Management of the County Development Code:

1. The applicant shall employ a qualified biologist (desert native plant specialist) to tag ~~those trees~~ **western Joshua tree (WJT)** that will ~~eventually be approved by CDFW for relocation~~ **be translocated.**
2. Transplantation ~~shall will~~ occur **only after a CDFW-executed CESA-ITP is obtained** in late fall or winter when tree metabolism is at its lowest. A watering regimen will be developed and a monitoring program implemented for the transplanted trees. Evidence of such program and on-going maintenance shall be provided to County Planning and evaluated for acceptability.
3. For other Joshua trees present on-site, but not within an area requiring their removal and transplantation, the applicant shall implement a tree protection plan that would include an assessment of the health of the trees, then determine how to protect them. ~~Protection of trees, where needed, may be accomplished by either creating an earthen berm around each tree or group of trees or by surrounding trees with a fenced enclosure.~~ **The tree protection plan** Evidence of such ~~action~~ shall be provided to the County Planning and evaluated for acceptability **and should consider requirements of the CESA ITP.**

During construction activities the following measures shall be employed:

4. All trees that might be indirectly impacted because they are located within the construction zone (adjacent to or near campsites, internal road, or buildings) shall be surrounded by construction fencing (e.g. orange fencing), **if in compliance with the CESA ITP.** Other avoidance measures tailored to the Project Site may be identified ~~during consultation with CDFW via~~ during in the ~~CESA ITP application process.~~
5. The project biologist shall conduct a worker education class designed to ensure that all workers on site understand the natural history of Joshua trees and the distance that must be maintained between a construction activity and a tree. The construction contractor shall be responsible for ensuring that each new

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construction employee that enters the site completes the worker education class. The construction contractor shall maintain a log for inspection by the project biologist to ensure that all workers are trained. Evidence of such action shall be provided to County Planning and evaluated for acceptability. **The CESA ITP is likely to include requirements for the worker education class.**

6. During long-term operation of the campground, the property owner shall have a qualified biologist on call for the following tasks **and tasks should comply with all measures in the CESA ITP:**
 - a. Conduct a worker education class for all new employees.
 - b. Provide educational pamphlets to all visitors.
 - c. Maintain earthen berms or fences and posted notices, and cleanup (if trash or debris are in the vicinity).
 - d. Once each year, conduct a (tree census) to **assess** the health of Joshua trees that have been transplanted and those that are located in proximity to the campground such that they may be indirectly impacted by camping activities.
 - e. Develop and implement a watering plan that provides water to trees twice annually, or as necessary to maintain Joshua trees.
 - f. Develop and maintain a nursery for Joshua trees to be used to replace trees that do not survive transplanting, or to replace dying trees due to climate change.
 - g. Provide mitigation monitoring and reporting to CDFW on the health of the Joshua trees. Frequency of monitoring and reporting shall be established through consultation with CDFG through the ITP application process.
 - h. Evidence of such action shall be provided to County Planning and evaluated for acceptability.

~~7. The applicant shall contribute to a CDFW Western Joshua Tree Mitigation Fund at such time as it is established by CDFW. The applicant's contribution is expected to be on a per acre basis and will be determined through the Incidental Take Permit process that will be determined in negotiation with CDFW. The submittal of an ITP application for the proposed Project will be submitted on the assumption that the Western Joshua tree will be listed as a threatened or endangered species by the State of California.~~

MM BIO-8

~~Any construction that r~~**Removal of any western Joshua tree** protected yuccas shall be conducted in accordance with the requirements of **the CESA ITP and the San Bernardino County ordinance**. All **western Joshua tree** protected yuccas to be removed shall be flagged and transplanted to an undisturbed area prior to construction per the requirements of State regulation and County ordinance.

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Nesting Birds

CDFW appreciates the incorporation of MM BIO-3, which considers nesting bird pre-construction surveys. However, CDFW is concerned that MM BIO-3 considers the start of bird nesting season as February 1 when hummingbirds may nest year-round and some species of raptors (e.g. owls, hawks, etc.) may commence nesting activities in January. Furthermore, MM BIO-3 defers guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting to a Nesting Bird Plan (NBP), which CDFW is not required to be signatory to. Thus, CDFW offers the following revisions to MM BIO-3 (edits are in ~~strikethrough~~ and **bold**):

MM BIO-3

All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. Bird nesting season generally extends from ~~January~~ **February 1** through September 15 **for raptors** in southern California and ~~specifically,~~ **February 1** ~~April 15~~ through August 31 **September 1** for migratory passerine birds. ~~In general, Projects should be constructed outside of this time to avoid impacts to nesting birds.~~ **If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300-foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.**

If Project **activities** cannot begin ~~constructed~~ outside of **the bird** nesting season, the project site shall be surveyed for nesting birds by a qualified avian biologist within three (3) days prior to initiating ~~the construction~~ **Project activities. Pre-construction nesting bird 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 containing eggs or young 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 100 feet for passerines and 300 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. If** ~~active nests are found during the pre-construction nesting bird surveys, a Nesting Bird~~

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~~Plan (NBP) will be prepared and implemented. At a minimum, the NBP will include guidelines for addressing active nests, establishing buffers, monitoring, and reporting. The NBP will include a copy of maps showing the location of all nests and an appropriate buffer zone around each nest sufficient to protect the nest from direct and indirect impact. The size and location of all buffer zones, if required, shall be determined by the biologist, and shall be based on the nesting species, its sensitivity to disturbance, and expected types of disturbance. The nests and buffer zones shall be field checked weekly by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist has determined the young birds have successfully fledged.~~

Burrowing Owl (*Athene cunicularia*)

According to the BRA, on “March 19, 20 and 26, 2020, Jericho biologist Shay Lawrey conducted a jurisdictional waters delineation (JD), WJT census, and focused desert tortoise, burrowing owl, and Le Conte’s thrasher surveys”. The ISMND also states that during the site assessment, the surveyors examined natural and non-natural substrates for burrows to determine size, shape, and aspect for suitability for burrowing owl and to see if any burrowing owl individuals or sign (molted feathers, cast pellets, prey remains, and owl whitewash) were present. The ISMND then concludes that since no burrowing owl individuals or sign were observed, burrowing owl was absent from the Project area.

CDFW exclusively recommends the 2012 Staff Report on Burrowing Owl Mitigation (California Department of Fish and Wildlife, 2012) for any project that is surveying and evaluating impacts to burrowing owls, as well as developing and implementing avoidance, minimization, and mitigation measures. However, because the BRA does not provide a description of the protocol or include survey results used to determine presence/absence of burrowing owl, CDFW is concerned that the survey for burrowing owl may not have been performed according to the 2012 Staff Report on Burrowing Owl Mitigation, which requires a habitat assessment according to Appendix C: Habitat Assessment and Reporting Details and four survey visits during the burrowing owl breeding season (generally from February 1 to August 31). Absent these details, and supporting documentation, it is unclear whether the Project’s impacts to burrowing owl have been adequately identified, disclosed, or mitigated.

In MM BIO-9 below, CDFW recommends that a habitat assessment be conducted prior to the start of Project activities as outlined in Appendix C of the Staff Report on Burrowing Owl Mitigation. Please note that habitat assessments dated more than one year prior to the construction date are considered outdated and should be updated.

If the habitat assessment determines suitable habitat for burrowing owl, protocol surveys should be conducted prior to commencement of Project activities. Surveys should be consistent with the Staff Report on Burrowing Owl Mitigation. If burrowing owls are identified on the site, the applicant should contact CDFW and conduct an

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impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing Project activities, to assist in the development of avoidance, minimization, and mitigation measures. Depending on the level of impacts, CDFW would likely recommend permanent conservation, enhancement, and management of existing, occupied burrowing owl habitat and measures to minimize impacts to burrowing owls on the Project site.

The ISMND includes MM BIO-4, which requires pre-construction surveys for desert tortoise and burrowing owl at least 30 days prior to new ground disturbance. Meanwhile, CDFW recommends pre-construction surveys for burrowing owl no less than 14 days prior to the initiation of any Project activities in accordance with the Staff Report on Burrowing Owl Mitigation. Further, MM BIO-4 does not consider desert tortoise or burrowing specific survey protocols. CDFW recommends the County revise MM BIO-4 (edits are in ~~strike through~~ and **bold**) and adopt MM BIO-9 (Burrowing Owl) and MM BIO-10 (Desert Tortoise), as per below:

MM BIO-4

Preconstruction surveys for **Burrowing Owl BUOW** and Desert Tortoise shall be conducted ~~at least 30 days prior to new ground disturbance and documentation indicating such a survey has occurred is to be provided to the County~~ **according to MM BIO-9 and MM BIO-10, respectively.**

MM BIO-9

Prior to grading or any other ground-disturbing activity, a qualified biologist shall conduct a habitat assessment for burrowing owls to determine if suitable burrowing owl habitat is present in and adjacent to the Project site. Surveys shall be conducted consistent with the procedures outlined in the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation (California Department of Fish and Wildlife, 2012).

If there is suitable habitat for burrowing owl, then focused breeding season surveys as described in the Staff Report on Burrowing Owl Mitigation shall be conducted by a qualified biologist. If presence of burrowing owl is determined, the applicant shall contact CDFW and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio.

No less than 14 days prior to ground-disturbing activities, a qualified biologist shall conduct pre-construction surveys. If no burrowing owl(s) are observed on site during the pre-construction clearance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW and the County prior to issuance of any grading permits, and

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no further action is required. If burrowing owl(s) are observed on site during the pre-construction clearance survey, areas occupied by burrowing owls shall be avoided. No ground-disturbing activities shall be permitted within 500 meters of an occupied burrow. A smaller buffer may be established if the qualified biologist determines a reduced buffer would not adversely affect the burrowing owl(s).

If burrowing owls cannot be avoided by the proposed Project, then a qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation to CDFW for review/approval prior to the commencement of Project activities. Burrow exclusion involves the installation of one-way doors in burrow openings during the nonbreeding season to temporarily or permanently exclude burrowing owls and to close burrows after verifying through site monitoring and scoping that the burrows are empty. Existing or artificial burrows situated less than 75 meters from the Project site are the ideal scenario for successful passive relocation. Additional factors for successful passive relocation are included in the CDFW 2012 Staff Report on Burrowing Owl Mitigation. Prior to passive relocation, suitable replacement burrows site(s) shall be provided at a ratio of no less than 2:1 and permanent conservation and management of burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owl impacts are replaced consistent with the Staff Report on Burrowing Owl Mitigation including its Appendix A within designated adjacent conserved lands identified through coordination with CDFW and the County. A qualified biologist shall confirm the natural or artificial burrows on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted, and a reporting plan shall be prepared. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, Project activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW prior to the start of Project activities.

Desert Tortoise (*Gopherus agassizii*)

The ISMND concludes that desert tortoise is absent from the Project site, but surveys for desert tortoise were conducted in accordance with the protocols described in the U.S. Fish and Wildlife's: 2009 "Desert Tortoise (Mojave Population) Field Manual: (*Gopherus agassizii*)", 2010 "Pre-Project Field Survey Protocol for Potential Desert Tortoise Habitats," and the August 31, 2017 survey protocol update, "Preparing for Any Action That May Occur Within the Range of The Mojave Desert Tortoise (*Gopherus agassizii*)", and not according to the U.S. Fish and Wildlife Service 2019 desert tortoise

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survey methodology, which CDFW recommends. The U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology requires surveys for desert tortoise be carried out during the desert tortoise active season (typically April to May or September to October), while the BRA indicates that surveys for desert tortoise were conducted in March, outside of the active season. To address potential impacts to desert tortoise, CDFW recommends MM BIO-10 below:

MM BIO-10

During the desert tortoise active season (April to May or September to October) pre-construction surveys for Desert Tortoise shall be conducted no more than 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence of desert tortoise, the Project proponent shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance of desert tortoise cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.

Sensitive Plants

CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a state ranking (S) of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. CDFW considers all associations with S1-S3 to be highly imperiled. Taking this into consideration, the BRA Appendix B: Plant Species Observed, identifies a diversity of plant species present, including beavertail cactus (*Opuntia basilaris*; S3) and the BRA's Appendix A: Sensitive Species Potential to Occur, identifies sensitive species with the potential to occur on-site, including San Bernardino milk-vetch (*Astragalus bernardinus*; S3). CDFW is concerned that although a focused botanical survey of the Project's property was said to be conducted in April, several special-status plant species (i.e., rare, sensitive, vulnerable, imperiled, CESA-listed) may have been overlooked, because only *one* survey was conducted when botanical field survey visits should be spaced throughout the growing season to accurately determine what plants exist in the Project area. This usually involves multiple visits to the Project area (e.g., in early, mid, and late spring) to capture the floristic diversity at a level necessary to determine if special-status plants are present and using reference

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sites (nearby accessible occurrences of the plants). CDFW is unclear whether reference sites were used, but reference sites should be utilized to determine whether special-status plants with the potential to occur on-site are identifiable at the times of year the botanical field surveys take place and to obtain a visual image of the special-status plants, associated habitat, and associated natural communities. All in all, CDFW does not consider the ISMND's botanical survey adequate to identify all special-status plant present on-site.

MM BIO-6 provides mitigation for sensitive plants in the form of translocation, but MM BIO-6 ignores that the BRA recommends conducting pre-construction springtime surveys for nine special-status plant species that have a moderate potential to occur in the Project area (e.g., San Bernardino milk-vetch). Please note that CDFW does not recommend transplantation of established native plants given the low survival rate of transplants. As such, CDFW is concerned that the approach is not appropriate for mitigation. To adequately offset impacts to special-status plants, CDFW recommends the County conduct botanical field surveys prior to starting Project activities. If any special-status plants are identified, the Project shall fully avoid special-status plants with an appropriate buffer. If complete avoidance cannot be achieved, Permittee should purchase mitigation credits from a mitigation bank or acquire and conserve lands in perpetuity with the target resources. As such, CDFW recommends that the County revise MM BIO-6 and condition the measure to include the following (edits are in **bold** and ~~strikethrough~~):

MM BIO-6

Prior to Project implementation, and during the appropriate season, the County shall conduct botanical field surveys following the Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level necessary to determine rarity and listing status.

If any species-status plants are identified, ~~the proposed Project shall be designed to~~ fully avoid sensitive and/or protected desert plants with an appropriate buffer established by the botanist and marked in the field (i.e., fencing or flagging) as

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per local regulations. If **any special-status species** the protected desert plants cannot be avoided, a relocation plan is required for approval by the County of San Bernardino and **the County shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or the acquisition and in perpetuity conservation of land approved by CDFW at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far from the Project site (i.e., within a separate watershed). If the Project has the potential to impact a CESA-listed species, the County should apply for a CESA ITP with CDFW.**

Lake and Streambed Alteration Notification

CDFW disagrees with the JD, which identifies Fish and Game Code section 1602 resources only within the immediate vicinity of Pipes Wash (Wash). The JD does not consider the bed or bank of the Wash as subject to Fish and Game Code section 1602. After looking at the engineering plans on Figure 3: Site Plans, CDFWS believes that the Project boundary extends into the bank of the Wash. Please note that the bank and bed of the Wash is subject to Fish and Game Code section 1602. CDFW recommends that the County adopt MM BIO-11 below to either obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or*, if notification under section 1602 of the Fish and Game Code is required for the Project, to obtain a CDFW executed Lake and Streambed Alteration Agreement:

MM BIO- 11

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

Trespass and Degradation of Habitat

Outside of MM BIO-7 above, the ISMND lacks details regarding deterring human entry or activities in adjacent sensitive habitat, including Fish and Game Code section 1602 resources. CDFW recommends the County conditions the installation and maintenance of barriers to separate the Project from adjacent habitat and implements methods to monitor and preclude access to adjacent habitat. Habitat degradation due to unauthorized trespass, littering, and vandalism should be thoroughly analyzed and disclosed in the final MND.

The Project proposes the use of a septic system that will connect sewer lines from each proposed building to the septic system. The septic system will function as a sewage disposal leach field and a qualified professional will certify that the system functions

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properly, meets code, and has the capacity required for the proposed Project. However, the ISMND does not consider the potential for leaching of sewage into biological resources. CDFW recommends that potential leaching of sewage/wastewater into Fish and Game section 1602 resources and adjacent sensitive habitat be analyzed in the final ISMND.

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 found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 requests that the County include in the final MND the suggested mitigation measures (Attachment 1) offered by CDFW to avoid, minimize, and mitigate Project impacts on California fish and wildlife resources.

CDFW appreciates the opportunity to comment on the ISMND for the Resort Camping Proj-2020-00191 (SCH No. 2022030476) and hopes our comments will assist the County in identifying, avoiding, minimizing, and mitigating Project impacts on fish and wildlife resources.

If you should have any questions pertaining to the comments provided in this letter, please contact Corina Jimenez, Environmental Scientist at Corina.Jimenez@wildlife.ca.gov.

ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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Sincerely,

DocuSigned by:



Alisa Ellsworth

Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov.

REFERENCES

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>BIO-1</p> <p>Joshua trees shall be protected to comply with the County of San Bernardino Development Code Chapter 88.01.050 through transplantation and stockpiling, and implementation of protective measures as recommended in the Protected Plant Preservation Plan prepared in October 2021 for the proposed Project. Additionally, prior to the implementation of the recommended measures outlined in the Protected Plant Preservation Plan, and prior to “take” of any western Joshua tree (WJT; a Candidate for listing as threatened under the California Endangered Species Act (CESA)) a CESA Incidental Take Permit (ITP) shall be obtained from the California Department of Fish and Wildlife (CDFW). California Fish and Game Code section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking of CESA-listed species. CDFW recommends permanent protection of</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>WJT through establishment of a conservation easement, development of a long-term management plan, and securing funding sufficient to implement management plan tasks in perpetuity. These tasks should be completed or financial security must be provided before starting any Project activities. In order to execute an ITP, CDFW requires documentation of CEQA compliance. CDFW requires the CEQA document have a State Clearing House number, show proof of filing fees, and proof that the document has been circulated.</p>		
<p>BIO-3</p> <p>All Project activities on-site shall be conducted outside of the nesting bird season to the maximum extent feasible. Bird nesting season generally extends from January 1 through September 15 for raptors in southern California and February 1 through September 1 for passerine birds. If Project activities begin during the non-nesting season (non-nesting season is typically from September 16 through December 31), a pre-construction survey shall be performed by a qualified biologist to verify the absence of nesting birds. A qualified biologist shall conduct the pre-activity survey within the Project area (including access routes) and a 300- foot buffer surrounding the Project area, no more than two hours prior to initiating Project activities.</p> <p>If Project activities cannot begin outside of the bird nesting season, the project site shall be surveyed for nesting birds by a qualified avian biologist within three (3) days prior to initiating Project activities. Pre-construction nesting bird 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 containing eggs or young 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 100 feet for passerines and 300 feet for raptors. A smaller or</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>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.</p>		
<p>BIO-4 Preconstruction surveys for Burrowing Owl and Desert Tortoise shall be conducted according to MM BIO-9 and MM BIO-10, respectively.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-6 Prior to Project implementation, and during the appropriate season, the County shall conduct botanical field surveys following the Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). The surveys shall be conducted by a CDFW-approved botanist(s) experienced in conducting floristic botanical field surveys, knowledgeable of plant taxonomy and plant community ecology and classification, familiar with the plants of the area, including special-status and locally significant plants, and familiar with the appropriate state and federal statutes related to plants and plant collecting. The botanical field surveys shall be conducted at the appropriate time of year when plants will both be evident and identifiable (usually, during flowering or fruiting) and, in a manner, which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. Botanical field surveys shall be conducted floristic in nature, meaning that every plant taxon that occurs in the Project area is identified to the taxonomic level</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>necessary to determine rarity and listing status.</p> <p>If any species-status plants are identified, the proposed Project shall fully avoid sensitive and/or protected desert plants with an appropriate buffer established by the botanist and marked in the field (i.e., fencing or flagging). If any special-status species cannot be avoided, a relocation plan is required for approval by the County of San Bernardino and the County shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or the acquisition and in perpetuity conservation of land approved by CDFW at a minimum 3:1 (replacement-to-impact) ratio. Note that a higher ratio may be warranted if the proposed mitigation lands are located far from the Project site (i.e., within a separate watershed). If the Project has the potential to impact a CESA-listed species, the County should apply for a CESA ITP with CDFW.</p>		
<p>BIO-7</p> <p>To meet the requirements of the Plant Protection and Management of the County Development Code:</p> <ol style="list-style-type: none"> 1. The applicant shall employ a qualified biologist (desert native plant specialist) to tag western Joshua tree (WJT) that will be translocated. 2. Transplantation shall occur only after a CDFW-executed CESA-ITP is obtained in late fall or winter when tree metabolism is at its lowest. A watering regimen will be developed and a monitoring program implemented for the transplanted trees. Evidence of such program and on-going maintenance shall be provided to County Planning and evaluated for acceptability. 3. For other Joshua trees present on-site, but not within an area requiring their removal and transplantation, the applicant shall implement a tree protection plan that would include an assessment of the health of the trees, then 	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>determine how to protect them. The tree protection plan shall be provided to the County Planning and evaluated for acceptability and should consider requirements of the CESA ITP.</p> <p>During construction activities the following measures shall be employed:</p> <ol style="list-style-type: none">4. All trees that might be indirectly impacted because they are located within the construction zone (adjacent to or near campsites, internal road, or buildings) shall be surrounded by construction fencing (e.g. orange fencing), if in compliance with the CESA ITP. Other avoidance measures tailored to the Project Site may be identified in the CESA ITP.5. The project biologist shall conduct a worker education class designed to ensure that all workers on site understand the natural history of Joshua trees and the distance that must be maintained between a construction activity and a tree. The construction contractor shall be responsible for ensuring that each new construction employee that enters the site completes the worker education class. The construction contractor shall maintain a log for inspection by the project biologist to ensure that all workers are trained. Evidence of such action shall be provided to County Planning and evaluated for acceptability. The CESA ITP is likely to include requirements for the worker education class.6. During long-term operation of the campground, the property owner shall have a qualified biologist on call for the following tasks and tasks should comply with all measures in the CESA ITP:<ol style="list-style-type: none">a. Conduct a worker education class for all new employees.b. Provide educational pamphlets to all visitors.		
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<ul style="list-style-type: none"> c. Maintain earthen berms or fences and posted notices, and cleanup (if trash or debris are in the vicinity). d. Once each year, conduct a tree census to assess the health of Joshua trees that have been transplanted and those that are located in proximity to the campground such that they may be indirectly impacted by camping activities. e. Develop and implement a watering plan that provides water to trees twice annually, or as necessary to maintain Joshua trees. f. Develop and maintain a nursery for Joshua trees to be used to replace trees that do not survive transplanting, or to replace dying trees due to climate change. g. Provide mitigation monitoring and reporting to CDFW on the health of the Joshua trees. Frequency of monitoring and reporting shall be established through consultation with CDFG through the ITP application process. h. Evidence of such action shall be provided to County Planning and evaluated for acceptability. 		
<p>BIO-8</p> <p>Removal of any western Joshua tree shall be conducted in accordance with the requirements of the CESA ITP and the San Bernardino County ordinance. All western Joshua tree to be removed shall be flagged and transplanted to an undisturbed area prior to construction per the requirements of State regulation and County ordinance.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>
<p>BIO-9</p> <p>Prior to grading or any other ground-disturbing activity, a qualified biologist shall conduct a habitat assessment for burrowing owls to determine if suitable burrowing owl habitat is present in and</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>adjacent to the Project site. Surveys shall be conducted consistent with the procedures outlined in the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation (California Department of Fish and Wildlife, 2012).</p> <p>If there is suitable habitat for burrowing owl, then focused breeding season surveys as described in the Staff Report on Burrowing Owl Mitigation shall be conducted by a qualified biologist. If presence of burrowing owl is determined, the applicant shall contact CDFW and conduct an impact assessment in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project activities to determine appropriate mitigation, including the acquisition and conservation of occupied replacement habitat at no less than a 2:1 ratio.</p> <p>No less than 14 days prior to ground-disturbing activities, a qualified biologist shall conduct pre-construction surveys. If no burrowing owl(s) are observed on site during the pre-construction clearance survey, a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW and the County prior to issuance of any grading permits, and no further action is required. If burrowing owl(s) are observed on site during the pre-construction clearance survey, areas occupied by burrowing owls shall be avoided. No ground-disturbing activities shall be permitted within 500 meters of an occupied burrow. A smaller buffer may be established if the qualified biologist determines a reduced buffer would not adversely affect the burrowing owl(s).</p> <p>If burrowing owls cannot be avoided by the proposed Project, then a qualified biologist shall prepare and submit a passive relocation program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the 2012 Staff Report on Burrowing Owl Mitigation to CDFW for review/approval prior to the commencement of Project activities. Burrow exclusion involves the installation of one-way doors in burrow openings during the nonbreeding season to</p>		
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<p>temporarily or permanently exclude burrowing owls and to close burrows after verifying through site monitoring and scoping that the burrows are empty. Existing or artificial burrows situated less than 75 meters from the Project site are the ideal scenario for successful passive relocation. Additional factors for successful passive relocation are included in the CDFW 2012 Staff Report on Burrowing Owl Mitigation. Prior to passive relocation, suitable replacement burrows site(s) shall be provided at a ratio of no less than 2:1 and permanent conservation and management of burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owl impacts are replaced consistent with the Staff Report on Burrowing Owl Mitigation including its Appendix A within designated adjacent conserved lands identified through coordination with CDFW and the County. A qualified biologist shall confirm the natural or artificial burrows on the conservation lands are suitable for use by the owls. Monitoring and management of the replacement burrow site(s) shall be conducted, and a reporting plan shall be prepared. The objective shall be to manage the replacement burrow sites for the benefit of burrowing owls (e.g., minimizing weed cover), with the specific goal of maintaining the functionality of the burrows for a minimum of 2 years. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, Project activities may begin. A final letter report shall be prepared by the qualified biologist documenting the results of the passive relocation. The letter shall be submitted to CDFW prior to the start of Project activities.</p>		
<p>BIO-10</p> <p>During the desert tortoise active season (April to May or September to October) pre-construction surveys for Desert Tortoise shall be conducted no more than 48 hours prior to initiation of Project activities and after any pause in Project activities lasting 30 days or more. Desert tortoise pre-construction surveys shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

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<p>methodology. The survey shall utilize perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms desert tortoise absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If the survey confirms presence of desert tortoise, the Project proponent shall submit to CDFW for review and approval a desert tortoise specific avoidance plan detailing the protective avoidance measures to be implemented to ensure complete avoidance of take to desert tortoise. If complete avoidance of desert tortoise cannot be achieved, CDFW recommends the Project proponent not undertake Project activities and Project activities be postponed until appropriate authorization (i.e., CESA ITP under Fish and Game Code section 2081) is obtained.</p>		
<p>BIO-11</p> <p>Prior to construction and issuance of any grading permit, the Project applicant should obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, <i>or</i> the Project applicant should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>