



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

August 26, 2022
Sent via email

Aug 26 2022

STATE CLEARINGHOUSE

Jarrett Ramaiya, City Planner
City of Murrieta
One Town Square, Murrieta, CA 92562
JRamaiya@MurrietaCA.gov

Subject: Mitigated Negative Declaration
Whitewood Condo / Apartment Project: DP 2021-2406, TPM 2021-2407
(38199), and Phasing Plan 2021-2408
State Clearinghouse No. 2022070491

Dear Mr. Ramaiya:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/ Mitigated Negative Declaration (IS/MND) on July 27, 2022, from the City of Murrieta (City) for the Whitewood Condo / Apartment Project: DP 2021-2406, TPM 2021-2407 (38199), and Phasing Plan 2021-2408 (Project) for Corman Leigh (Project Applicant) pursuant 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.

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.

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

CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the Western Riverside County MSHCP per Section 2800, *et seq.*, of the California Fish and Game Code on June 22, 2004. The MSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit. The City of Murrieta is a permittee to the MSHCP and is responsible for implementation of the MSHCP and its associated Implementation Agreement. CDFW is providing the following comments as they relate to the Project's consistency with the MSHCP and CEQA.

PROJECT DESCRIPTION SUMMARY

Project Location

The proposed Project is in the City of Murrieta, Riverside County, California, along Clinton Keith Road, at the southeast corner of the intersection of Whitewood Road and Clinton Keith Road. Specifically, the Project is in Section 2, in Township 7 South, Range 3 West SBM as found on the USGS – Murrieta Quadrangle, 7.5 Minute series topographic map, Latitude 33.595926, longitude -117.161048 – within Assessor's Parcel Number 900-030-036-5.

Project Description

The 29.18-acre Project proposes to construct thirty-eight buildings consisting of twenty-seven condos installed during the first phase of construction, the remaining eleven apartment buildings are proposed to be developed during a separate phase. Ultimately, the site will contain a total of 483 dwelling units at a density of 16.55 dwelling units per acre within the 29.18-acre site.

COMMENTS AND RECOMMENDATIONS

CDFW is concerned about the adequacy of the impact analysis in the MND. Following review of MND, CDFW offers the comments and recommendations presented below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological)

resources. The comments and recommendations are also offered to enable the City to update the IS/MND to adequately disclose impacts and measures for CDFW and the public to review and comment on the proposed Project with respect to the Project's compliance with Fish and Game Code sections 1602 and 3503, 3503.5, and 3513 and consistency with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). CDFW recommends that each of these be addressed prior to finalization of the Mitigated Negative Declaration.

Nesting Birds and Migratory Bird Treaty Act

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: Fish and Game Code section 3503 makes it 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) 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 as designated in the Migratory Bird Treaty Act or any part of such 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.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. Birds have been documented nesting outside of the nesting season identified in the draft MND (February 1 to September 1). For example, owls nesting in January and September, hummingbirds nesting in January and February, and red-tailed hawks nesting in January and February. Given documented excursions from the proposed nesting bird season, we recommend the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting birds and birds of prey. To avoid take of nesting birds, nesting bird surveys should not be limited to work during a specific time frame (February 1 to September 1) due to changes in timing of avian breeding activity. CDFW requests the removal of 'Typically February 1 through September 1' language in the MND, as nesting bird seasons have consistently been shown to shift out of previously cited seasons.

The duration of a pair to build a nest and incubate eggs varies considerably, therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction.

CDFW is concerned that potential impacts to nesting birds are not identified or discussed within the MND and strongly suggests the City evaluate the direct, indirect, and cumulative impacts to nesting birds, before approval and certification of the MND. Appropriate analysis would include conducting focused nesting bird surveys throughout the Project site. To address the above issues and help the Project applicant avoid unlawfully taking of nests and eggs, CDFW requests the City revise the following mitigation measures included in the MND, as per below (edits are in ~~strike through~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program.

MM BIO-3: In order to avoid violation of the MBTA and the California Fish and Game Code, ~~The State of California prohibits the "take" of active bird nests. To avoid an illegal take of active bird nests,~~ **the Project Applicant shall adhere to the following: any site preparation activities (ground disturbance, construction activities,** grubbing, brushing or tree removal) should be conducted outside of the ~~State identified~~ nesting **bird** season (typically ~~February 1 through September 1~~). Alternatively, ~~n~~ Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to **site preparation** ~~vegetation clearing or ground disturbance~~ activities. Preconstruction 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 preconstruction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. ~~To avoid impacts to nesting birds, any grubbing or vegetation removal should occur outside peak breeding season (typically February 1 through September 1).~~ **The Project Applicant shall adhere to the following:**

- 1. Applicant shall designate a biologist (Designated Avian Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**
- 2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities.**

Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate.

Western Riverside County Multiple Species Habitat Conservation Plan and Permittee Obligations

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The City of Murrieta is the Lead Agency and is signatory to the Implementing Agreement of the MSHCP.

The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The City of Perris the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. To demonstrate consistency with the MSHCP, as part of the CEQA review, the City shall ensure the Project implements the following: 1) pays local development mitigation fees and other relevant fees as set forth in Section 8.5 of the MSHCP and 2) demonstrates compliance with: a) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools, set forth in Section 6.1.2 of the MSHCP; b) the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; c) the policies set forth in Section 6.3.2; and d) the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

The MSHCP identifies that the California Department of Fish and Wildlife and the U. S. Fish and Wildlife Service (collectively known as the Wildlife Agencies) shall be notified in advance of approval of public and private projects for the identified MSHCP activities which includes the Urban/Wildlands Interface Guidelines (MSHCP Section 6.1.4). CDFW requests that to demonstrate compliance with the MSHCP, the City complete MSHCP implementation prior to adoption of the MND for the Project.

Urban/Wildlands Interface Guidelines

As the MSHCP Conservation Area is assembled, hardline boundaries are established between development and MSHCP Conservation Areas. Development near MSHCP Conservation Area may result in edge effects that will adversely affect biological resources within the MSHCP Conservation Area. To minimize edge effects and

maintain conservation value within the Conservation areas the City is required to implement the Urban/Wildlands Interface Guidelines (MSHCP Section 6.1.4) for drainage, toxics, lighting, noise, invasives, barriers, and grading/land development. The Project site is adjacent to Criteria Cell 5673, of the French Valley/Lower Sedco Hills MSHCP Subunit (Subunit 5) and is subject to the Urban/Wildland Interface Guidelines. Potential edge effects from the Project include noise, lighting, invasive plants, trespass, fire risk, and possibly toxic materials such as herbicides and pesticides used in landscaping and maintenance, as well as non-hazardous oils and fuels used during Project operations. The MSHCP identifies that project review and impact mitigation are provided through the CEQA process to address the Urban/Wildland Interface guidelines. CDFW provides Project specific concerns for the Urban/Wildland Interface guidelines below. CDFW recommends that these potential Project impacts are addressed through specific biological mitigation measures.

Lighting

The MND identifies that light and glare from interior and exterior building lighting, safety and security lighting, and vehicular traffic accessing the site will occur once the site is in operation and would introduce a new source of light into the adjacent Conservation Area. Nighttime lighting has the potential to indirectly affect wildlife use and activity in the Criteria Cell 5673. Shielded lighting will produce a glow, and with enough lights, may increase the ambient light level in the area at night. Species may be subject to increased predation from diurnal predators foraging for longer periods due to light from the adjacent development as well as increased visual acuity of nocturnal predators. The MND does not identify species that may be more vulnerable to increased predation from increased visibility and other impacts of adjacent lighting.

The MND identifies that the proposed Project would be developed in accordance with the Murrieta Development Code and that must comply with the City's requirements that lighting be restricted to the Project site through shielding and directing light downward, and in compliance with Mt. Palomar lighting standards (MDC Section 16.18.100 (Lighting) and MDC Section 16.18.110 (Mount Palomar Lighting Standards)). However, the MND provides limited detail on shielded lighting in MM BIO 4 and lacks specific, technical details on the type of lighting along the Conservation Area boundary. The MND does not provide data on existing ambient lighting conditions and does not analyze the impacts of the lighting on the adjacent Conservation Area. The MND does not demonstrate that the proposed MM BIO 4 measure will be sufficient to offset the impacts of Project-related lighting on the Conservation Area. To ensure that any building, traffic, or parking area lighting would not significantly impact species within the Conservation Area and would comply with MSHCP urban wildlife interface guidelines, CDFW recommends the Project is conditioned to provide a Lighting Plan that identifies existing ambient lighting conditions, analyzes the lighting impacts on the adjacent conservation area, and demonstrates that the proposed lighting plan will not significantly increase the lighting on the Conservation Area .

Noise

Per the MSHCP, wildlife within the MSHCP Conservation Area should not be subject to noise that would exceed residential noise standards. However, MM BIO-4 only has the generic language from the MSHCP and does not provide specific details on the types of measures that will be implemented to reduce noise impacts to the adjacent Conservation Area. CDFW recommends that MM BIO-4 be revised to provide specific measures to address noise impacts from the development to reduce edge effects from noise on the adjacent Conservation area. These measures should establish existing noise levels in the Conservation Area and post-project monitoring to evaluate the noise levels in the Conservation Area during construction and after the Project is complete.

Barriers

Proposed land uses adjacent to the MSHCP Conservation Area are required to incorporate barriers, in individual Project designs to minimize unauthorized public access, domestic animal predation, illegal trespass, and dumping in the MSHCP Conservation Area. CDFW is concerned about trespass onto the Conservation Area from unauthorized uses which can lead to habitat loss and degradation, increase fire hazards, increased predation, and spread of invasive species. The Planning Species for the French Valley/Lower Sedco Hills Subunit 5 include many avian species, including Bell's sage sparrow, California horned lark, coastal California gnatcatcher, grasshopper sparrow, and California rufous-crowned sparrow that are vulnerable to invasive predators such as cats. The proposed Project's domestic cat population may strongly reduce the avian population size and affect the survival of the populations of several MSHCP covered animal species inside the Conservation Area unless an effective cat barrier is erected between the proposed development and the Conservation Area. To control public access and other urban threats such as pets, invasive species, fire, etc. CDFW requests a fencing plan that includes the erection of a cat-proof barrier. The barrier should consist of 8-foot-tall fencing made of secure and fire-proof materials (such as brick, stone, or metal) placed along the entire boundary adjacent to conservation area to prohibit movement of people and pets from the development area into the Conservation Area. The top of all walls and fences should be designed to prevent animals from entering conservation areas using systems such as a roller bars, angled fence tops, or other effective fence designs to keep out pets, especially cats. No section of the fence should include clear panels or sections such as glass or plastic as these are a strike hazards to birds which fly into them and die². This type of fencing would also prevent residents from creating openings and unauthorized access through the walls into the conservation areas. MM BIO-4 in the MND for barriers uses standard language from the MSHCP and is too vague to enforce. The measure does not provide details on the specific type and placement of the barrier or how it will be effective in controlling trespass. CDFW requests specific language be added into MM BIO-4 to elaborate on what protective barriers will be put in place to ensure adjacent

² <https://www.darksksociety.org/handouts/birdsafebuildings.pdf>

conservation areas are adequately protected from the proposed adjacent development and Project construction activities.

To address the issues identified above for land use agency guidelines, CDFW requests the inclusion of the following edits in the MND (edits are in ~~strikethrough~~ and **bold**):

MM BIO-4: The Applicant shall comply with the following **prior to approval of the Final Design:**

- ~~Drainages – Proposed developments in proximity to the MSHCP Conservation Area~~
To ensure that the quantity and quality of runoff discharged to the MSHCP Conservation Area is not altered in an adverse way when compared with existing conditions, the Project shall be designed to avoid discharge of untreated surface runoff from developed and paved areas into the MSHCP Conservation Area. Stormwater systems shall be designed to prevent the release of toxins, chemicals, petroleum products, exotic plant materials or other elements that might degrade or harm biological resources or ecosystem processes within the MSHCP Conservation Area, The Project shall incorporate measures, including measures required through the National Pollutant Discharge Elimination System (NPDES) requirements, to ensure that the quantity and quality of runoff discharged to the MSHCP Conservation Area is not altered in an adverse way when compared with existing conditions. The Applicant shall a submit a Drainage Plan to the City of Murrieta and the Western Riverside County Regional Conservation Authority for review and approval.
- ~~Toxics – Land uses proposed in proximity to the MSHCP Conservation Area that use chemicals or generate bioproducts such as manure that are potentially toxic or may adversely affect wildlife species, habitat or water quality. The Applicant shall incorporate measures to ensure that application of such chemicals does not result in discharge to the MSHCP Conservation Area.~~
- ~~Lighting – Night lighting shall be directed away from the MSHCP Conservation Area to protect species within the MSHCP Conservation Area from direct and indirect night lighting. Prior to approval of the Final Design, an analysis of potential impacts from light and glare from interior and exterior building lighting, safety and security lighting, and vehicular traffic accessing the site shall be submitted to the City for review and approval. This analysis shall demonstrate that due to shielded and directional lighting in compliance with Mt. Palomar lighting standards and MDC, no lighting shall be introduced into the adjacent Conservation Area. If potential lighting impacts are identified, the lighting design (placement, light spectrum, and shielding), or other design solutions acceptable to the City of Murrieta shall be implemented to eliminate lighting impacts on the adjacent Conservation Areas. Shielding, including Turtle Bay type LED lighting, shall be incorporated in Project designs to ensure ambient lighting in the MSHCP Conservation Area is not increased. The Lighting Plan shall include monitoring during construction and post-project to demonstrate lighting levels do not increase in the Conservation Area. If light standards are exceeded, the Project Applicant is responsible for immediate implementation~~

of remedial actions to reduce light levels to acceptable levels identified in the Lighting Plan.

- **Noise – Prior to approval of the Final Design, a Noise plan shall be submitted to the City of Murrieta for review and approval. Proposed The Noise Plan shall identify noise generating land uses that may affecting the MSHCP Conservation Area and shall incorporate setbacks, berms or walls to minimize the effects of noise on MSHCP Conservation Area resources pursuant to applicable rules, regulations and guidelines related to land use noise standards. For planning purposes, wildlife within the MSHCP Conservation Area should not be subject to noise that would exceed residential noise standards. The Noise Plan shall include monitoring during construction and post-project to demonstrate noise levels in the Conservation Area do not exceed residential standards. If noise standards are exceeded, the Project Applicant is responsible for immediate implementation of remedial actions to reduce noise levels to acceptable levels.**
- **Invasives – The Project shall avoid the use of invasive species (MSHCP Section 6.1.4 – Table 6-2) for landscaping portions of development that are adjacent to the MSHCP Conservation Area. Prior to approval of the Final Design, a landscaping plan, using native vegetation, for areas adjacent to the Conservation Area shall be submitted to the City for review and approval.**
- **Barriers – Proposed land uses adjacent to the MSHCP Conservation Area shall incorporate barriers, where appropriate in individual project designs to minimize unauthorized public access, domestic animal predation, illegal trespass, and or dumping in the MSHCP Conservation Area. Prior to approval of the Final Design, a fencing plan shall be submitted to the City of Murrieta and the Western Riverside County Regional Conservation Authority for review and approval. The fencing plan shall include 8-foot-tall fencing made of secure and fire-proof materials (such as brick, stone, or metal) placed along the entire boundary adjacent to Conservation Area to prohibit movement of people and pets from the development area into the Conservation Area. The top of all walls and fences shall be designed to prevent animals from entering Conservation Areas using systems such as a roller bars, angled fence tops, or other effective fence designs to keep out pets, especially cats. To prevent bird strikes and reduce bird mortality, no section of the fence should include clear panels or be made of transparent materials such as glass or plastic. The Fencing Plan shall identify a maintenance and monitoring plan for the fence, including who is responsible for fence maintenance with sufficient funding to maintain the barrier.**
- **Grading/Land Development – Manufactured slopes associated with proposed site development shall not extend into the MSHCP Conservation Area.**

Status of JPR 08-11-25-01

The Joint Project Review (JPR 08-11-25-01) for the Project site was completed in 2009. The JPR 08-11-25-01 included a total of 118 acres, of which 89 acres were proposed for conservation and approximately 29 acres for development. The 29 acres of

development in the JPR is approximately consistent with 29.18 acres of development in the Project description. However, it appears that after the JPR was approved, a shift in conservation lands occurred, with more conservation occurring to the east and less occurring in the south. The approved JPR 08-11-25-01 footprint does not match the Project footprint in the MND. The City is responsible for updating the footprint in the approved JPR to accurately portray Project impacts. It is important to maintain accurate records of development and conservation with the MSHCP. CDFW recommends that City of Murrieta consult with the Western Riverside County Regional Conservation Authority to update or amend the JPR with an accurate Project footprint.

Burrowing Owl (Athene cunicularia)

Suitable habitat for burrowing owl was found within the Project site but no owls were detected on the Project site. A burrowing owl habitat suitability assessment was conducted in April of 2021 that included 100 percent visual coverage of any potentially suitable BUOW habitat within and adjacent the project site (Biological Resource Assessment, Appendix 4a). During the April 2021 survey it was noted that that no evidence of burrowing owl was found in the survey area and most of the Project site is not suitable to support this species. No burrowing owl individuals or sign including castings, feathers or whitewash were observed and burrowing owl were considered absent from the Project area. Unfortunately, the April 2021 survey did not follow the required "Burrowing Owl Survey Instructions for the Western Riverside Multiple Species Habitat Conservation Plan Area"³ which specifies that if suitable habitat is found, then a burrow and burrowing owl survey including both Parts A and B should be completed. Part A includes a focused burrow survey; recording and mapping (including GPS coordinates) the location of all suitable burrowing owl habitat, potential owl burrows, burrowing owl sign, and any owls observed; and preparation of a written report including photographs of the Project site, location of burrowing owl habit, location of transects, and burrow survey methods. Part B includes focused burrowing owl surveys on four separate days during the appropriate time of year, the first one may be conducted during the Focused Burrow Survey. Surveys will not be accepted if they are conducted during rain, high winds (> 20 mph), dense fog, or temperatures over 90 °F. Part B focused burrowing owl surveys should be conducted in the morning one hour before sunrise to two hours after sunrise or in the early evening two hours before sunset to one hour after sunset. The Biological Resource Assessment report did not include weather conditions, time that surveys were conducted, mapping of burrows, photographs, and only conducted one focused burrowing owl survey.. CDFW cannot determine if the burrowing owl surveys were conducted properly based on the information provided in the MND and Biological Resource Assessment. CDFW recommends that the City review and follow requirements for burrowing owl outlined in the MSHCP, specifically Section 6.3.2 (Additional Survey Needs and Procedures) and the MSHCP Burrowing

3 https://www.wrc-rca.org/species/survey_protocols/burrowing_owl_survey_instructions.pdf

Owl Survey Instructions to ensure the Project meets MSHCP Burrowing Owl Survey Instructions and evaluate if the surveys were conducted properly.

CDFW requests the City evaluate the direct, indirect, and cumulative impacts to burrowing owl through the appropriate analysis, before approval and certification of the MND. Appropriate analysis would include conducting focused burrow and burrowing owl surveys as described in the MSHCP Burrowing Owl Survey Instructions and a discussion of the results of the focused burrow and burrowing owl surveys and suitable habitat surveys for the Project site. If burrowing owls are not detected on site during focused burrowing owl surveys then the BIO-1 and BIO-2 are appropriate. However, if burrowing owls are detected during focused surveys then the City should complete the Determination of Biologically Equivalent or Superior Preservation (DBESP) process prior to approval and certification of the MND.

To avoid take of active nests, appropriate avoidance and minimization measures need to be identified in the MND to protect burrowing owl during the burrowing owl nesting season. CDFW recommends creation of a Burrowing Owl Plan if owls are detected on the Project Site. To address the issues identified above, CDFW requests the inclusion of the following edits in the MND (edits are in ~~strikethrough~~ and added text in **bold**):

BIO-1 A pre-construction survey for resident burrowing owls will also be conducted by a qualified biologist within 30 days prior to commencement of grading and construction activities within those portions of Project sites containing suitable burrowing owl habitat and for those properties within a Project site where the biologist could not gain access. The results of the survey shall be submitted to the City prior to obtaining a grading permit. In addition, a survey shall be conducted and reported to CDFW within three days of ground disturbance or vegetation clearance following the recommended guidelines of the MSHCP. If ground disturbing activities in these areas are delayed or suspended for more than 30 days after the pre-construction survey, the area shall be resurveyed for owls. The pre-construction survey will be conducted in accordance with the current Burrowing Owl Instruction for the Western Riverside MSHCP.

Pre-construction surveys for BUOW should be conducted no more than 3 days prior to commencement of project-related ground disturbance to verify that BUOW remain absent from the Project area. **The burrowing owl is a state and federal Species of Special Concern and is also protected under the MBTA and by state law under the FGC (FGC 3513 & 3503.5). In general, impacts to BUOW can be avoided by avoiding occupied burrows and conducting work outside of their nesting season. However, if all work cannot be conducted outside of nesting season and occupied burrows cannot be avoided, then BIO-2 shall be required.**

BIO-2. If burrowing owl are discovered within the Project footprint, a Project specific BUOW protection and/or passive relocation plan **Burrowing Owl Plan** shall be

prepared to determine suitable buffers and/or artificial burrow construction locations to minimize impacts to this species. If a BUOW is found on-site at the time of construction, all activities likely to affect the animal(s) shall cease immediately and regulatory agencies shall be contacted, **within 48 hours of detection**, to determine appropriate management actions.

- 1) A Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012) and MSHCP. The Burrowing Owl Plan shall describe proposed avoidance, minimization, relocation, and monitoring as applicable. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls and/or information on the adjacent or nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls may also be required in the Burrowing Owl Plan. The Applicant shall implement the Burrowing Owl Plan following CDFW and USFWS review and concurrence. A final letter report shall be prepared by the qualified biologist documenting the results of the Burrowing Owl Plan. The letter shall be submitted to CDFW prior to the start of Project activities. When a qualified biologist determines that burrowing owls are no longer occupying the Project site per the criteria in the Burrowing Owl Plan, Project activities may begin.**

ADDITIONAL COMMENTS AND RECOMMENDATIONS

Native and Drought-Tolerant Landscaping

To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species, and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens (for example the Riverside-Corona Resource Conservation District in Riverside). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>.

ENVIRONMENTAL DATA

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

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 appreciates the opportunity to comment on the MND for the Whitewood Condo / Apartment Project: DP 2021-2406, TPM 2021-2407 (38199), and Phasing Plan 2021-2408, State Clearinghouse No. 2022070491, and recommends that the City address CDFW's comments and concerns prior to adoption of the MND to avoid, minimize, or mitigate Project impacts on biological resources. We are requesting a meeting with the City to discuss the Project prior to adoption. If you should have any questions pertaining to the comments provided in this letter, please contact John Dempsey at (909) 549-8245 or at John.Dempsey@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn-Marquez
Acting Environmental Program Manager

ec: **California Department of Fish and Wildlife:**

Heather Pert, Senior Environmental Scientist Supervisory
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John Dempsey, Environmental Scientist

Jarrett Ramaiya, City Planner
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State Clearinghouse:

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ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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 for implementing the mitigation measure. 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.

Biological (BIO) Mitigation Measures (MM)	Implementation Schedule	Responsible Party
<p>MM BIO-3: In order to avoid violation of the MBTA and the California Fish and Game Code, the Project Applicant shall adhere to the following: any site preparation activities (ground disturbance, construction activities, grubbing, brushing or tree removal) should be conducted outside of the nesting bird season-Nesting bird surveys shall be conducted by a qualified avian biologist no more than three (3) days prior to site preparation activities. Preconstruction 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 preconstruction nesting bird surveys, a Nesting Bird Plan (NBP)</p>	<p>Prior to site preparation activities</p>	<p>Project Proponent</p>

<p>shall be prepared and implemented by the qualified avian biologist. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. The Project Applicant shall adhere to the following:</p> <ol style="list-style-type: none">1. Applicant shall designate a biologist (Designated Avian Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the Project site; density, and complexity of the habitat; number of survey participants;		
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<p>survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate</p>		
<p>MM BIO-4: The Applicant shall comply with the following prior to approval of the Final Design:</p> <ul style="list-style-type: none"> • Drainages –To ensure that the quantity and quality of runoff discharged to the MSHCP Conservation Area is not altered in an adverse way when compared with existing conditions, the Project shall be designed to avoid discharge of untreated surface runoff from developed and paved areas into the MSHCP Conservation Area. Stormwater systems shall be designed to prevent the release of toxins, chemicals, petroleum products, exotic plant materials or other elements that might degrade or harm biological resources or ecosystem processes within the MSHCP Conservation Area, The Project shall incorporate measures, including measures required through the National Pollutant Discharge Elimination System (NPDES) requirements, to ensure that the quantity and quality of runoff discharged to the MSHCP Conservation Area is not altered in an adverse way when compared with existing conditions. The Applicant shall a submit a Drainage Plan to the City of Murrieta and the Western Riverside County Regional Conservation Authority for review and approval. • Toxics – Land uses proposed in proximity to the MSHCP Conservation Area that use 	<p>Prior to Approval of Final Design</p>	<p>Project Proponent</p>

<p>chemicals or generate bioproducts such as manure that are potentially toxic or may adversely affect wildlife species, habitat or water quality. The Applicant shall incorporate measures to ensure that application of such chemicals does not result in discharge to the MSHCP Conservation Area.</p> <ul style="list-style-type: none">• Lighting – Night lighting shall be directed away from the MSHCP Conservation Area to protect species within the MSHCP Conservation Area from direct and indirect night lighting. Prior to approval of the Final Design, an analysis of potential impacts from light and glare from interior and exterior building lighting, safety and security lighting, and vehicular traffic accessing the site shall be submitted to the City for review and approval. This analysis shall demonstrate that due to shielded and directional lighting in compliance with Mt. Palomar lighting standards and MDC, no lighting shall be introduced into the adjacent Conservation Area. If potential lighting impacts are identified, the lighting design (placement, light spectrum, and shielding), or other design solutions acceptable to the City of Murrieta shall be implemented to eliminate lighting impacts on the adjacent Conservation Areas. Shielding, including Turtle Bay type LED lighting, shall be incorporated in Project designs to ensure ambient lighting in the MSHCP Conservation Area is not increased. The Lighting Plan shall include monitoring during construction and post-project to demonstrate lighting levels do not increase in the Conservation Area. If		
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<p>light standards are exceeded, the Project Applicant is responsible for immediate implementation of remedial actions to reduce light levels to acceptable levels identified in the Lighting Plan.</p> <ul style="list-style-type: none">• Noise – Prior to approval of the Final Design, a Noise plan shall be submitted to the City of Murrieta for review and approval. Proposed The Noise Plan shall identify noise generating land uses that may affecting the MSHCP Conservation Area and shall incorporate setbacks, berms or walls to minimize the effects of noise on MSHCP Conservation Area resources pursuant to applicable rules, regulations and guidelines related to land use noise standards. For planning purposes, wildlife within the MSHCP Conservation Area should not be subject to noise that would exceed residential noise standards. The Noise Plan shall include monitoring during construction and post-project to demonstrate noise levels in the Conservation Area do not exceed residential standards. If noise standards are exceeded, the Project Applicant is responsible for immediate implementation of remedial actions to reduce noise levels to acceptable levels.• Invasives – The Project shall avoid the use of invasive species (MSHCP Section 6.1.4 – Table 6-2) for landscaping portions of development that are adjacent to the MSHCP Conservation Area. Prior to approval of the Final Design, a landscaping plan, using native vegetation, for areas adjacent to the Conservation Area shall be submitted to the City for review and approval.		
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<ul style="list-style-type: none">• Barriers – Proposed land uses adjacent to the MSHCP Conservation Area shall incorporate barriers to minimize unauthorized public access, domestic animal predation, illegal trespass, and or dumping in the MSHCP Conservation Area. Prior to approval of the Final Design, a fencing plan shall be submitted to the City of Murrieta and the Western Riverside County Regional Conservation Authority for review and approval. The fencing plan shall include 8-foot-tall fencing made of secure and fire-proof materials (such as brick, stone, or metal) placed along the entire boundary adjacent to Conservation Area to prohibit movement of people and pets from the development area into the Conservation Area. The top of all walls and fences shall be designed to prevent animals from entering Conservation Areas using systems such as a roller bars, angled fence tops, or other effective fence designs to keep out pets, especially cats. To prevent bird strikes and reduce bird mortality, no section of the fence should include clear panels or be made of transparent materials such as glass or plastic. The Fencing Plan shall identify a maintenance and monitoring plan for the fence, including who is responsible for fence maintenance with sufficient funding to maintain the barrier.• Grading/Land Development – Manufactured slopes associated with proposed site development shall not extend into the MSHCP Conservation Area.		
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<p>BIO-1 A pre-construction survey for resident burrowing owls will also be conducted by a qualified biologist within 30 days prior to commencement of grading and construction activities within those portions of Project sites containing suitable burrowing owl habitat and for those properties within a Project site where the biologist could not gain access. The results of the survey shall be submitted to the City prior to obtaining a grading permit. In addition, a survey shall be conducted and reported to CDFW within three days of ground disturbance or vegetation clearance following the recommended guidelines of the MSHCP. If ground disturbing activities in these areas are delayed or suspended for more than 30 days after the pre-construction survey, the area shall be resurveyed for owls. The pre-construction survey will be conducted in accordance with the current Burrowing Owl Instruction for the Western Riverside MSHCP.</p> <p>Pre-construction surveys for BUOW should be conducted no more than 3 days prior to commencement of project-related ground disturbance to verify that BUOW remain absent from the Project area. The burrowing owl is a state and federal Species of Special Concern and is also protected under the MBTA and by</p>	<p>Prior to commencement of grading and construction activities</p>	<p>Project Proponent</p>

<p>state law under the FGC (FGC 3513 & 3503.5). In general, impacts to BUOW can be avoided by avoiding occupied burrows and conducting work outside of their nesting season. However, if all work cannot be conducted outside of nesting season and occupied burrows cannot be avoided, then BIO-2 shall be required.</p> <p>BIO-2. If burrowing owl are discovered within the Project footprint, a Project specific BUOW protection and/or passive relocation plan Burrowing Owl Plan shall be prepared to determine suitable buffers and/or artificial burrow construction locations to minimize impacts to this species. If a BUOW is found on-site at the time of construction, all activities likely to affect the animal(s) shall cease immediately and regulatory agencies shall be contacted, within 48 hours of detection, to determine appropriate management actions.</p> <p>1) A Burrowing Owl Plan shall be prepared in accordance with guidelines in the CDFW Staff Report on Burrowing Owl (March 2012) and MSHCP. The Burrowing Owl Plan shall describe proposed avoidance, minimization, relocation, and monitoring as applicable. The Burrowing Owl Plan shall include the number and location of occupied burrow sites and details on proposed buffers if avoiding the burrowing owls and/or information on the adjacent or</p>		
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<p>nearby suitable habitat available to owls for relocation. If no suitable habitat is available nearby for relocation, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls may also be required in the Burrowing Owl Plan. The Applicant shall implement the Burrowing Owl Plan following CDFW and USFWS review and concurrence. A final letter report shall be prepared by the qualified biologist documenting the results of the Burrowing Owl Plan. The letter shall be submitted to CDFW prior to the start of Project activities. When a qualified biologist determines that burrowing owls are no longer occupying the Project site per the criteria in the Burrowing Owl Plan, Project activities may begin.</p>		
<p>MM Bio 4: [Update with DBESP results and findings]</p>	<p>Prior to adoption of MND</p>	<p>City of Murrieta</p>