



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Deserts Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**FEB 14 2023**

**STATE CLEARING HOUSE**

February 14, 2023  
*Sent via email*

Azhar Khan, Senior Planner  
San Bernardino County  
385 North Arrowhead Avenue  
San Bernardino, CA 92415

Subject: Initial Study/ Mitigated Negative Declaration  
Wonder Inn Hotel/Resort  
State Clearinghouse No. 2023010295

Dear Mr. Khan:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from San Bernardino County (County) for the Wonder Inn Hotel/Resort Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 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

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<sup>1</sup> 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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implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

The Project site is located at 78201 Amboy Road near the City of Twentynine Palms in unincorporated San Bernardino County, California; Latitude, 34.164989 N and Longitude -115.954732 W. The Project site totals 134.6 acres on Assessor’s Parcel Number’s 0625-071-04, -05, -07, -08, -09, and -10. The Project will construct a hotel, convert an existing 4,407- square foot office building to a restaurant/lobby, and build 106 guest rooms in form of pre-manufactured pods, a 5,000 square foot conference room, a 3,985 square foot wellness center, and ancillary structures (e.g., bathrooms) on approximately 24.4-acres. The Project also includes the construction of a swimming pool, garden, astronomy pergola, and rock lined swales along the southern side of the Project property to intercept and divert surface runoff to proposed detention ponds located on both sides of the Project.

**Timeframe:** Project completion is anticipated to be less than one year from Project initiation (currently unknown).

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County in adequately identifying, avoiding, and/or mitigating the Project’s significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

### **Assessment of Biological Resources**

#### **Loss of Nesting Bird and/or Foraging Habitat**

The biggest threat to birds includes habitat loss and the conversion of natural vegetation into commercial, residential, and industrial land uses. Project implementation could result in the loss of nesting and/or foraging habitat for passerine and raptor species from the removal of 53 acres of creosote bush scrub and 39 acres of jojoba fields.

Protection Status. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA).

Avoidance. The final MND should include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project

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phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The final MND should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site.

Mitigation. CDFW supports the inclusion of biological (BIO) mitigation measure (MM)-1 “Pre-Construction Nesting Bird Clearance Survey” with edits (edits are in ~~strikethrough~~ and **bold**) in the final MND, as per below to avoid impacts to nesting birds:

*Mitigation Measure BIO-1*

Pre-Construction Nesting Bird Clearance Survey. All construction activities shall comply with the federal Migratory Bird Treaty Act of 1918 (MBTA) and California Fish and Game Code Sections 3503, 3511 and 3513. The MBTA governs the taking and killing of migratory birds, their eggs, parts, and nests and prohibits the take of any migratory bird, their eggs, parts, and nests. ~~Compliance with the MBTA shall be accomplished by completing the following: Construction activities involving vegetation removal shall be conducted between September 1 and January 31. If construction occurs inside the peak nesting season (between February 1 and August 31), a pre-construction survey by a qualified Biologist shall be conducted within 72 hours prior to construction activities to identify any active nesting locations. If the Biologist does not find any active nests, the construction work shall be allowed to proceed. The biologist conducting the clearance survey shall document a negative survey with a report indicating that no impacts to active avian nests shall occur.~~

**Regardless of the time of year, a pre-construction sweep shall be performed to verify the absence of nesting birds. A qualified biologist (Biologist) shall conduct the pre-activity sweep within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. Additionally, a nesting bird survey shall be conducted by the Biologist no more than three (3) days prior to the initiation of Project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. Surveys shall include any potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment.**

If the Biologist finds an active nest within the pre-construction survey area **or the Project’s zone of influence (generally 100-300 feet)** and determines that the nest may be impacted, the Biologist shall delineate an appropriate **no disturbance** buffer zone around the nest **to prevent nest destruction or abandonment**. The size of the buffer shall be determined by the Biologist and shall be based on the nesting species, its sensitivity to disturbance, expected types of disturbance, and location in relation to the construction activities. **The buffer shall be a minimum of** ~~These buffers are typically 300 feet from the nests of nonlisted species~~ **songbirds** and 500 feet from the nests of raptors and listed species **unless a smaller buffer is specifically determined**

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**by a qualified biologist familiar with the nesting phenology of the nesting species.** Any active nests observed during the survey shall be mapped on an aerial photograph. ~~Only construction activities (if any) that have been approved by a Biological Monitor shall take place within the buffer zone until the nest is vacated.~~ **The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests as confirmed by the Biologist.** The Biologist shall serve as a Construction Monitor when construction activities take place near active nest areas to **determine whether construction activities are disturbing the nesting birds or nestlings. If the Biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no disturbance buffer' shall be expanded to** ensure that no inadvertent impacts on these nests occur. **If an active nest is encountered during construction, construction shall stop immediately until the Biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws.** Results of the preconstruction survey and any subsequent monitoring shall be provided to **CDFW**, the Property Owner/Developer and the City. The monitoring report shall summarize the results of the nest monitoring, **and** describe construction restrictions currently in place, ~~and confirm that construction activities can proceed within the buffer area without jeopardizing the survival of the young birds.~~

### **Special-Status Bats**

Project construction and activities may result in direct and indirect impacts to bats, such as pallid bat (*Antrozous pallidus*; Species of Special Concern [SSC]) and spotted bat (*Euderma maculatum*; SSC). Direct impacts may include removal and/or modification of structures occupied by roosting bats. This could result in injury or mortality to bats as well as loss of roosting habitat. Indirect impacts to bats and roosts could result from increased noise disturbances, loss of foraging habitat, human activity, dust, vegetation clearing, ground-disturbing activities (e.g., staging, mobilizing, excavating, and grading), and vibrations caused by heavy equipment.

The biological survey that was conducted was reconnaissance in nature (i.e., not focused) and took place during the daytime, when bats are inactive and may go undetected. As a result, onsite bat presence remains undetermined. Any impacts to bats, either direct or indirect including roost disturbance and loss of habitat would be significant. Therefore, species-specific bat surveys are required during appropriate weather and time to determine presence/absence of bats onsite and to mitigate the Project's impact to bats below a significant level.

Protection Status. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs., § 251.1).

Avoidance. The Project is conditioned to avoid impacts to bats through MM BIO-2. CDFW appreciates that MM BIO-2 proposes to avoid the maternity season for bat species, which generally spans from April 1 to August 31.

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Mitigation. CDFW supports the inclusion of MM BIO-2 “Pre-Construction Bat Surveys” with edits (edits are in ~~strikethrough~~ and **bold**) in the final MND, as per below to avoid impacts to bats.

Pre-Construction Bat Surveys. ~~No less than 60~~ **No more than 30** days prior to initiating Project activities, ~~the Project biologist~~ **a CDFW-approved bat biologist** shall conduct a bat **survey on and within 100 feet of the Project site during appropriate weather conditions and time of day prior to initiating** ~~roosting habitat suitability assessment of any vegetation that may be removed, altered, or indirectly impacted by the Project~~ activities. Any locations with potential to **provide daytime and/or nighttime, wintering (hibernacula), and maternity roost sites** ~~Support roosting bats shall be surveyed by the~~ **CDFW-approved bat** ~~Project biologist~~ using an appropriate combination of structure inspection, sampling, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate time of day/night to ensure detection of bats. The results of the pre-construction bat surveys shall be submitted to CDFW for review no less than ~~14~~ **30** days prior to the initiation of Project activities. If the presence of bats within the Project is confirmed, **bats shall be identified to the species level. The colony shall be evaluated for its size and significance and to determine the presence of a maternal colony. A CDFW-approved bat biologist shall develop and implement a Bat Avoidance, Monitoring, and Protection Plan (BAMPP) that includes Project-specific avoidance and minimization measures to monitor Project-related noise, vibration, lighting, project phasing and timing, including and shall include** the designation of buffers based upon what bat species are found, and phased removal of trees.; **The BAMPP shall be developed and submitted to CDFW for review and approval prior to initiating Project activities.** If the site supports maternity roosts, Applicant shall avoid **Project activities** ~~disturbing these areas during the breeding season~~ **(typically, maternity season is April 1 through August 31)** and shall compensate for impacts and losses to maternity roosts and/or special-status bat habitat through a mitigation strategy approved by CDFW.

### **Desert Tortoise (*Gopherus agassizii*)**

Project activities may result in the permanent loss of up to 134.6 acres of potential habitat for desert tortoise, a state-threatened, proposed endangered species, given that the Project property supports habitat for desert tortoise, as recognized in the IS/MND’s Habitat Assessment.

A search of the California Natural Diversity Database (CNDDDB 2023) yielded four (4) occurrences of desert tortoise within a 5-mile radius of the Project site. If present, take of desert tortoise may occur as a result of Project-related activities such as crushing of desert tortoise-occupied burrows from construction equipment, vehicles, and foot traffic. Additionally, Project activities such as grading, ground disturbance, and vegetation clearing may also result in take of desert tortoise.

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Protection Status. Desert tortoise is a state-threatened, proposed endangered species under CESA. Take of desert tortoise is prohibited except as authorized by State law (Fish & Game Code, §§ 2080, 2085, California Code of Regulations, tit. 14, § 786.9).

Avoidance. The IS/MND is conditioned to avoid impacts to desert tortoise through pre-construction surveys (see MM BIO-3 below). In areas where desert tortoise may be present and cannot be avoided, CDFW encourages the Project proponent to obtain a CESA Incidental Take Permit (ITP), as re-iterated in MM-BIO-3 below.

Mitigation. CDFW appreciates the inclusion of MM BIO 3 “Pre-Construction Desert Tortoise Clearance Survey” and encourages the County move forward with MM BIO-3 as revised below to avoid impacts to desert tortoise (edits are in ~~strikethrough~~ and **bold**):

### *Mitigation Measure BIO-3*

Pre-Construction Desert Tortoise Clearance Survey. A pre-construction clearance survey shall be conducted by a CDFW-approved biologist ~~thirty (30) days~~ **no more than 48 hours** prior to ground disturbing activities ~~in undeveloped areas~~ to confirm the absence of desert tortoise within the boundaries of the ~~survey~~ **Project area and a 50-foot buffer and after any pause in Project activities lasting 30 days or more** during desert tortoise active season (April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. **Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented.** Survey transects should be spaced at 10-meter (33-foot) intervals ~~throughout the undeveloped portions of the project area~~ to provide 100 percent visual coverage and increase the likelihood of locating desert tortoise and/or sign. All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets. Results of the survey shall be submitted to CDFW **prior to start of Project activities.** If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. ~~Although not anticipated, if~~ **If** desert tortoise are found onsite during the pre-construction clearance survey, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures ~~can be implemented~~ to avoid any direct or indirect impacts to desert tortoise, or if “Take” permits will need to be obtained prepared and approved by the USFWS and CDFW.

### **Burrowing Owl (*Athene cunicularia*)**

The Habitat Assessment concludes that the Project site does not support suitable habitat for burrowing owl, a California SSC, however, no focused surveys were conducted to determine presence/absence of burrowing owls. Burrowing owls are

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known to occur within one (1) mile of the Project site (CNDDDB 2023). Burrowing owls favor open areas populated with scarce, low-lying vegetation, such as that found on the Project site. Burrowing owl surveys should be conducted whenever burrowing owl habitat or sign is encountered on or adjacent to (within 150 meters) a project site and follow protocols set forth in CDFW's [Staff Report on Burrowing Owl Mitigation](#) (CDFG 2012).

Project construction may result in injury or mortality of burrowing owls, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Also, the Project may result in the permanent loss of up to 134.6 acres of potential breeding, wintering, and foraging habitat for burrowing owl. CDFW recommends that the County review and follow requirements for burrowing owl as outlined in the 2012 Staff Report to ensure the Project meets burrowing owl survey requirements and to avoid potential impacts to burrowing owl and burrowing owl foraging, breeding, and nesting habitat.

Protection Status. Burrowing owl is a CDFW SSC. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Burrowing owl is a SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

Avoidance. Burrowing owl are susceptible to impacts year-round as their breeding season generally extends from February 1 to August 31 and their overwintering period generally from September 1 to January 31. While overwintering, burrowing owl may be less likely to be detected as they overwinter underground in burrows. In areas where burrowing owl may be present, ground disturbing should be avoided. If burrowing owl are found within the Project area during pre-construction surveys (see MM BIO-4 below) or construction activities, and it is not possible to avoid active burrows, passive relocation and mitigation should be implemented as per MM BIO-5 below.

Mitigation. In areas where burrowing owl may be present, CDFW recommends that the County follow the recommendations and guidelines provided in the [Staff Report on Burrowing Owl Mitigation](#) (2012 Staff Report; CDFW 2012c). The 2012 Staff Report specifies three steps for project impact evaluations: a habitat assessment; surveys; and an impact assessment. Impact assessments should evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance by the Project. If impacts to burrowing owl or their associated habitat are to occur, the Project should be conditioned such that appropriate habitat for burrowing owl is protected or created. Habitat should be secured or created based on site-specific analysis and consider the wide variation of natal area, home range, foraging area, and other factors influencing burrowing owls and burrowing owl population persistence in a particular area. Mitigation for permanent impacts to nesting,

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occupied, and satellite burrows and burrowing owl habitat should be on, adjacent or proximate to the impact site where possible and where habitat is sufficient to support burrowing owls present. If mitigation occurs offsite, it should include (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, and (b) be sufficiently large acreage with the presence of fossorial mammals. Suitable mitigation lands should be based on a comparison of the habitat attributes of the impacted and conserved lands, including but not limited to type and structure of habitat being impacted or conserved; density of burrowing owls in impacted and conserved habitat; and significance of impacted or conserved habitat to the species range wide. Therefore, CDFW supports the inclusion of MM BIO-4 with revisions (edits are in ~~strikethrough~~ and **bold**) and recommends the adoption of MM BIO-5 in the final MND, as per below to avoid impacts to burrowing owl:

#### *Mitigation Measure BIO-4*

Pre-Construction Burrowing Owl Clearance Survey. A pre-construction clearance survey shall be conducted prior to any ground disturbance or vegetation removal activities to ensure that burrowing owls ~~are remain~~ absent, and impacts do not occur to occupied burrows on or within 500 feet of the project site. In accordance with the CDFW's Staff Report on Burrowing Owl Mitigation (CDFW 2012), two (2) preconstruction clearance surveys should be conducted, **one at no more than 14 —30** days and **another within** 24 hours, prior to any ground disturbance or vegetation removal activities. **The surveys shall include 100 percent coverage of the project site. If both surveys reveal no burrowing owls are present or sign thereof, no additional actions related to this measure are required and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction. If occupied active burrows or sign thereof are found within the development footprint during the pre-construction clearance survey, Project activities shall not commence, and Mitigation Measure BIO-5 shall apply.**

#### *Mitigation Measure BIO-5*

Burrowing Owl Avoidance/Relocation. If active burrows or signs thereof are found within the development footprint during the pre-construction clearance surveys, site-specific non-disturbance buffer zones shall be established by the qualified biologist and shall be no less than 300 feet. If determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows, passive relocation shall be implemented if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the applicant and the County, shall prepare and submit a passive relocation

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**program in accordance with Appendix E (i.e., Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans) of the CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW review/approval prior to the commencement of disturbance activities onsite and propose mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction 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.**

### **Impacts to Sensitive Plant Species**

CDFW is concerned that the Project may affect sensitive plant species with the potential to occur onsite, such as alkali mariposa-lily (*Calochortus striatus*; Rank 1B.2) considering floristic surveys were conducted in March, which is outside of the blooming period for some sensitive plant species; for example, alkali mariposa-lily has a general blooming period of April through June. The Project has the potential to impact sensitive species, that are rare, threatened, or endangered in California (Rank 1B.2), such as alkali mariposa-lily. Grading, vegetation removal, and other ground disturbances are likely to result in direct mortality of sensitive plants.

Protection Status. Take of any CESA-listed plant species (i.e., western Joshua tree) that results from the Project is prohibited, except as authorized by State law (Fish & Game Code, §§ 2080, 2085, California Code of Regulations, tit. 14, § 786.9). Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Likewise, CDFW considers State listed communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S1, S2, and S3 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in the [Manual of California Vegetation \(MCV\) | California Native Plant Society \(cnps.org\)](#) (CNPS 2022).

Avoidance. The final MND should include measures to fully avoid and otherwise protect special status, sensitive, and rare plant species, and plant communities from Project-related direct and indirect impacts. The Project should discuss how the Project has been designed to avoid impacts to special status plant species so that CDFW may assess whether impacts have been lowered to less than significant. CDFW therefore recommends a thorough, floristic-based assessment of special status plants at the appropriate time(s) of year, using the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018 or most recent version) before the County adopts the MND.

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Mitigation. To avoid impacts to sensitive plant species, CDFW recommends MM BIO-6 below. As indicated in MM BIO-6, if sensitive plant species are present, the County should avoid the plant(s). If complete avoidance is not feasible, the County should mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species (i.e., western Joshua tree), the County should apply for a CESA ITP with CDFW.

#### *Mitigation Measure BIO-6*

**Pre-construction rare plant clearance survey. Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife's (CDFW) 2018 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 special-status plants are identified, the County shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the County shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species, the Project Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.**

#### **Lake and Streambed Alteration**

CDFW has authority over activities in rivers, streams and lakes that will substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake (Fish and Game Code section 1602). For any such activities, the County should provide written notification of Lake and Streambed

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Alteration to CDFW and obtain a Lake and Streambed Alteration Agreement pursuant to Fish and Game Code section 1602.

The IS/MND states that a preliminary jurisdictional delineation was conducted for the Project, during which it was determined that several unnamed ephemeral drainages (total number undisclosed) exist within the Project site. Based on aerial imagery, CDFW estimates there are at least two distinct drainages onsite. Although the IS/MND states that not all of the drainages will be impacted, no information is provided on which drainages will be avoided or how they will be avoided and/or impacted. It is also worth noting that the jurisdictional delineation was not provided in the IS/MND.

Avoidance. A notification to CDFW of Lake and Streambed Alteration should be provided for the Project to ensure impacts to Fish and Game Code section 1602 resources are assessed by CDFW, and if impacts are to occur that impacts are authorized and mitigated. The notification should include thorough details, including corresponding acreage of each drainage and acres of permanent and temporary impacts. The notification should also demonstrate how each drainage will be completely avoided or impacted and include the jurisdictional delineation that was conducted.

Mitigation. CDFW recommends MM BIO-7 below to determine impacts to Fish and Game Code section 1602 resources, and if impacts are to occur, to authorize and offset those impacts.

*Mitigation Measure BIO-7*

**Lake and Streambed Alteration Notification: Prior to construction and issuance of any grading permit the Project Proponent should either: (1) obtain written correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or (2) obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.**

## **ADDITIONAL COMMENTS AND RECOMMENDATIONS**

### **Drought-Tolerant Landscaping**

The Project proposes native palm trees for landscaping and shade trees. Because California has entered another period of extended drought, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). 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. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: [Around the Yard \(saveourwater.com\)](http://AroundtheYard.saveourwater.com).

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## **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: [Submitting Data to the CNDDDB \(ca.gov\)](#). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [CNDDDB - Plants and Animals \(ca.gov\)](#).

## **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 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 IS/MND for San Bernardino County Wonder Inn Hotel/Resort (SCH No. 2023010295) 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](mailto:Corina.Jimenez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  


84FBB8273E4C480...  
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## **ATTACHMENTS**

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

## **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.

<b>Biological (BIO) Mitigation Measures (MM)</b>	<b>Implementation Schedule</b>	<b>Responsible Party</b>
<p>MM BIO-1</p> <p><u>Pre-Construction Nesting Bird Clearance Survey</u>. All construction activities shall comply with the federal Migratory Bird Treaty Act of 1918 (MBTA) and California Fish and Game Code Sections 3503, 3511 and 3513. The MBTA governs the taking and killing of migratory birds, their eggs, parts, and nests and prohibits the take of any migratory bird, their eggs, parts, and nests.</p> <p>Regardless of the time of year, a pre-construction sweep shall be performed to verify the absence of nesting birds. A qualified biologist (Biologist) shall conduct the pre-activity sweep within the Project areas (including access routes) and a 500-foot buffer surrounding the Project areas, within 2 hours prior to initiating Project activities. Additionally, a nesting bird survey shall be conducted by the Biologist no more than three (3) days prior to the initiation of Project activities, including, but not limited to clearing, grubbing, and/or rough grading to prevent impacts to birds and their nests. Surveys shall include any</p>	<p>Prior to the initiation of Project activities</p>	<p>Project Proponent</p>

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<p>potential habitat (including trees, shrubs, the ground, or nearby structures) that may be impacted by activities resulting in nest destruction or abandonment.</p> <p>If the Biologist finds an active nest within the pre-construction survey area or the Project's zone of influence (generally 100-300 feet) and determines that the nest may be impacted, the Biologist shall delineate an appropriate no disturbance buffer zone around the nest to prevent nest destruction or abandonment. The size of the buffer shall be determined by the Biologist and shall be based on the nesting species, its sensitivity to disturbance, expected types of disturbance, and location in relation to the construction activities. The buffer shall be a minimum of 500 feet from the nests of raptors and listed species unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species. Any active nests observed during the survey shall be mapped on an aerial photograph. no longer occupied and the juvenile birds can survive independently from the nests as confirmed by the Biologist. The Biologist shall serve as a Construction Monitor when construction activities take place near active nest areas to determine whether construction activities are disturbing the nesting birds or nestlings. If the Biologist determines that construction activities pose a disturbance to nesting, construction work shall be stopped in the area of the nest and the 'no disturbance buffer' shall be expanded to ensure that no inadvertent impacts on these nests occur. If an active nest is encountered during construction, construction shall stop immediately until the Biologist can determine the status of the nest and when work can proceed without risking violation to state or federal laws. Results of the preconstruction survey and any subsequent monitoring shall be provided to CDFW, the Property Owner/Developer and the City. The monitoring report shall summarize the results of the nest monitoring and describe construction restrictions currently in place.</p>		
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<p>MM BIO-2</p> <p><u>Pre-Construction Bat Surveys.</u> No more than 30 days prior to initiating Project activities, a CDFW-approved bat biologist shall conduct a bat survey on and within 100 feet of the Project site during appropriate weather conditions and time of day prior to initiating Project activities. Any locations with potential to provide daytime and/or nighttime, wintering (hibernacula), and maternity roost sites shall be surveyed by the CDFW-approved bat biologist using an appropriate combination of structure inspection, sampling, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate time of day/night to ensure detection of bats. The results of the pre-construction bat surveys shall be submitted to CDFW for review no less than 14 days prior to the initiation of Project activities. If the presence of bats within the Project is confirmed, bats shall be identified to the species level. The colony shall be evaluated for its size and significance and to determine the presence of a maternal colony. A CDFW-approved bat biologist shall develop and implement a Bat Avoidance, Monitoring, and Protection Plan (BAMPP) that includes Project-specific avoidance and minimization measures to monitor Project-related noise, vibration, lighting, project phasing and timing, and shall include the designation of buffers based upon what bat species are found, and phased removal of trees. The BAMPP shall be developed and submitted to CDFW for review and approval prior to initiating Project activities. If the site supports maternity roosts, Applicant shall avoid Project activities during the breeding season (typically, maternity season is April 1 through August 31) and shall compensate for impacts and losses to maternity roosts and/or special-status bat habitat through a mitigation strategy approved by CDFW.</p>	<p>Prior to the initiation of Project activities</p>	<p>Project Proponent</p>
<p>MM BIO-3</p> <p><u>Pre-Construction Desert Tortoise Clearance Survey.</u> A pre-construction clearance survey shall be conducted by a CDFW-approved biologist no more than 48 hours prior to ground disturbing activities to confirm the absence of desert tortoise within the boundaries of the</p>	<p>Prior to the initiation of Project activities</p>	<p>Project Proponent</p>

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<p>Project area and a 50-foot buffer and after any pause in Project activities lasting 30 days or more during desert tortoise active season (April to May or September to October), in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until 2 negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Survey transects should be spaced at 10-meter (33-foot) intervals to provide 100 percent visual coverage and increase the likelihood of locating desert tortoise and/or sign. All burrows, if present, will be thoroughly inspected for the presence of desert tortoise or evidence of recent use using non-intrusive methods (i.e., mirror, digital camera). Burrow characteristics including class, shape, orientation, size, and evidence of deterioration will be recorded on field data sheets. Results of the survey shall be submitted to CDFW prior to start of Project activities. If the survey confirms absence, the CDFW-approved biologist shall ensure desert tortoise do not enter the Project area. If desert tortoise are found onsite during the pre-construction clearance survey, coordination will need to occur with the USFWS and CDFW to determine if avoidance and minimization measures to avoid any direct or indirect impacts to desert tortoise, or if "Take" permits will need to be obtained prepared and approved by the USFWS and CDFW.</p>		
<p>MM BIO-4</p> <p><u>Pre-Construction Burrowing Owl Clearance Survey.</u> A pre-construction clearance survey shall be conducted prior to any ground disturbance or vegetation removal activities to ensure that burrowing owls are absent, and impacts do not occur to occupied burrows on or within 500 feet of the project site. In accordance with the CDFW's Staff Report on Burrowing Owl Mitigation (CDFW 2012), two (2) preconstruction clearance surveys should be conducted, one at no more than 14 days and another within 24 hours, prior to any ground disturbance or vegetation removal activities. The surveys shall include 100 percent coverage of the</p>	<p>Prior to the initiation of Project activities</p>	<p>Project Proponent</p>

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<p>project site. If both surveys reveal no burrowing owls are present or sign thereof, no additional actions related to this measure are required and a letter shall be prepared by the qualified biologist documenting the results of the survey. The letter shall be submitted to CDFW prior to construction. If occupied active burrows or sign thereof are found within the development footprint during the pre-construction clearance survey, Project activities shall not commence, and Mitigation Measure BIO-5 shall apply.</p>		
<p>MM BIO-5</p> <p><u>Burrowing Owl Avoidance/Relocation.</u> If active burrows or signs thereof are found within the development footprint during the pre-construction clearance surveys, site-specific non-disturbance buffer zones shall be established by the qualified biologist and shall be no less than 300 feet. If determined appropriate, a smaller buffer may be established by the qualified biologist following monitoring and assessments of the Project's effects on the burrowing owls. If it is not possible to avoid active burrows, passive relocation shall be implemented if a qualified biologist has determined there are no nesting owls and/or juvenile owls are no longer dependent on the burrows. A qualified biologist, in coordination with the applicant and the County, 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 CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) for CDFW review/approval prior to the commencement of disturbance activities onsite and propose mitigation for permanent loss of occupied burrow(s) and habitat consistent with the 2012 Staff Report on Burrowing Owl Mitigation. When a qualified biologist determines that burrowing owls are no longer occupying the Project site and passive relocation is complete, construction 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.</p>	<p>Prior to the initiation of Project activities</p>	<p>Project Proponent</p>

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<p>MM BIO-6</p> <p><u>Pre-construction rare plant clearance survey.</u> Prior to Project implementation, and during the appropriate season, a qualified biologist shall conduct botanical field surveys within the Project area following protocols set forth in the California Department of Fish and Wildlife’s (CDFW) 2018 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 special-status plants are identified, the County shall avoid the plant(s), with an appropriate buffer (i.e., fencing or flagging). If complete avoidance is not feasible, the County shall mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank and/or land acquisition and conservation at a mitigation ratio determined by CDFW after Project analysis. If the Project has the potential to impact a state-listed species, the Project Applicant should apply for a California Endangered Species Act (CESA) Incidental Take Permit (ITP) with CDFW.</p>	<p>Prior to the initiation of Project activities</p>	<p>Project Proponent</p>
<p>MM BIO-7</p> <p><u>Lake and Streambed Alteration Notification:</u> Prior to construction and issuance of any grading permit the Project Proponent should either: (1) obtain written</p>	<p>Prior to the initiation of Project activities</p>	<p>Project Proponent</p>

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<p>correspondence from CDFW stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or (2) obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>		
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