



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Inland Desert Region  
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Ontario, CA 91764  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



February 21, 2023  
*Sent via email*

Cheri Flores  
Planning Manager  
City of La Quinta  
78-495 Calle Tampico  
La Quinta, CA 92253



Austin Residence (PROJECT)  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH# 2023020070

Dear Ms. Flores:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of La Quinta for the 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

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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.

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.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Prest Vuksic Greenwood Architects

**Objective:** The Project proposes residential development improvements to the site at 77600 Avenida Fernando in the City of La Quinta. The Project site is designated Open Space under the City's land use designation. The proposed Project includes a private tennis court located at the northwest corner of the site and a spa located on the central eastern portion of the site, just east of the existing pool. The Applicant also proposes associated site improvements, which include landscaping, utility infrastructure, a seating area, a boulder water spring, and two lawns—one containing a water feature and a fire feature. Retention basins would be constructed to collect and store storm runoff generated during the 100-year design storm per City drainage ordinance requirements.

**Location:** The Project site is located at 77600 Avenida Fernando in the City of La Quinta (City), in Riverside County, California. The Project site encompasses APN 658-170-010 and a portion of APN 658-170-003. The existing property occupies APN 658-170-011.

**Timeframe:** Not indicated in the MND

## **COMMENTS AND RECOMMENDATIONS**

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the City of La Quinta in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts have been mitigated to a level that is less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the mitigation measure for nesting birds in the MND is not sufficient in timing and scope to reduce impacts to less

than significant. CDFW is also concerned that the MND lacks a complete and accurate description of the Project's use of artificial nighttime lighting and that the mitigation measure for artificial nighttime lighting is inadequate given that the Project is located adjacent to a Conservation Area under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP). CDFW also provides recommendations regarding landscaping and compliance with the CVMSHCP.

### **1) Nesting Birds**

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

Page 23 of the MND indicates that the Project site has the potential to support nesting birds given the ornamental vegetation onsite and vegetation in the rocky slopes adjacent to the site. Although the MND includes Biological Measure 2 (BIO-2) for nesting birds, the timing and scope are insufficient to ensure that impacts are reduced to a level less than significant. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting on-site.**

To support the Project applicant in avoiding the take of nests, eggs, and nesting birds any time they are located on-site, CDFW recommends the following changes to Mitigation Measure BIO-2 for Nesting Birds (with additions in **bold** and removals in ~~strikethrough~~):

#### **Mitigation Measure BIO-2: Nesting Birds**

**Nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an**

**appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.** ~~If unavoidable Project construction activities must begin during the nesting bird season (February 1<sup>st</sup> through August 31<sup>st</sup>), a pre-construction nesting bird survey shall be conducted no more than 14 days prior to initiation of ground disturbance and vegetation removal activities. The nesting preconstruction bird survey shall be conducted by a biologist familiar with identification of avian species known to occur in Riverside County. The nesting bird survey shall be conducted on foot inside the project boundary, including a 300-foot buffer for passerines (song birds) and 500-foot buffer for raptors in areas of suitable habitat. Inaccessible areas will be surveyed using binoculars to the extent practical. If nests are found, an avoidance buffer (dependent upon species, the proposed work activity, the existing disturbances associated with land uses outside of the site) shall be determined and demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to mark the boundary. If a raptor nest is observed in a tree proposed for removal, the applicant must consult with CDFW. All construction personnel be notified of the existence of the buffer zone and to avoid entering the buffer zone during nesting season. No ground disturbing activities shall occur within this buffer area until the avian biologist has confirmed the breeding/nesting is completed and the young have fledged. Encroachment into the buffer shall occur only at the discretion of the qualified biologist.~~

## **2) *Artificial Nighttime Lightning***

Page 14 of the MND indicates that the tennis court will include 18-foot-tall lights, and that “all light sources will be designed with internal baffles to direct the lightning towards the ground and the developed areas and have a zero-side angle cut off to the horizon.” Appendix D of the MND includes a photometric analysis for lightning only associated with the tennis court. The MND lacks a description of all types of lightning that would be used by the Project and an analysis of direct and indirect impacts on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife. Available research indicates that artificial nighttime lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; and the

detection of resources and natural enemies and navigation<sup>2</sup>. Further, many of the effects of artificial nighttime lighting on population or ecosystem-level processes are still poorly known.

CDFW is concerned that without a complete and accurate description of the Project's artificial nighttime lighting, the MND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant. CDFW recommends that the MND is updated to include lighting specifications for all artificial nighttime lighting that will be used by the Project, an analysis of the direct and indirect impacts of artificial nighttime lighting on biological resources, and avoidance, minimization, and mitigation measures that will reduce impacts to less than significant.

Although the MND includes Mitigation Measure AES-1, it is insufficient in scope to protect biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife. CDFW recommends the following changes to Mitigation Measure AES-1 (with additions in **bold** and removals in ~~strike through~~):

### **Mitigation Measure AES-1: Artificial Nighttime Lighting**

**During Project construction and long-term operation, the Project shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. Ensure that all lighting for Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare onto other properties—including any areas of the adjacent Santa Rosa and San Jacinto Mountains Conservation Area—or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler. The Project developer shall ensure that all ambient lighting of landscape features are oriented facing away from the mountainside and into the property so that the surrounding conservation area is not impacted by unnatural light sources.**

### **3) Landscaping**

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<sup>2</sup> Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. *The ecological impacts of nighttime light pollution: a mechanistic appraisal*. Biological Reviews, 2013.

The MND includes limited details on landscaping plans for the Project. 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. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>. In addition, Section 4.0 of the CVMSHCP includes "Table 4-112: Coachella Valley Native Plants Recommended for Landscaping" (pp. 4-180 to 4-182; [https://cvmshcp.org/Plan\\_Documents.htm](https://cvmshcp.org/Plan_Documents.htm)).

#### **4) Coachella Valley Multiple Species Habitat Conservation Plan**

Within the Inland Deserts Region, CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the CVMSHCP per Section 2800, et seq., of the California Fish and Game Code on September 9, 2008. The CVMSHCP 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.

Compliance with approved habitat plans, such as the CVMSHCP, 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 CVMSHCP as a result of this Project is necessary to address CEQA requirements. To obtain additional information regarding the CVMSHCP please go to: <http://www.cvmshcp.org/>.

The Project occurs within and adjacent to the Santa Rosa and San Jacinto Mountains Conservation Area and is subject to the provisions and policies of the CVMSHCP, including the Joint Project Review (JPR) process through the Coachella Valley Conservation Commission (CVCC). The City of La Quinta is the Lead Agency and a signatory to the Implementing Agreement and Permittee of the CVMSHCP. To be considered a covered activity under the CVMSHCP, Permittees should demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. The Conservation Objectives for Santa Rosa and San Jacinto Mountains Conservation Area are identified in Section 4.3.21 of the CVMSHCP. The MND should demonstrate how the proposed Project is consistent with the Conservation

Objectives and Required Measure (as identified in CVMSHP Section 4.3.21), and address any applicable Avoidance, Minimization, and Mitigation Measures (CVMSHCP Section 4.4) and Land Use Adjacency Guidelines (CVMSHCP Section 4.5).

The JPR process has been completed by CVCC for the Project. In the MND, Mitigation Measure BIO-1 addresses fencing plans and the Project's consistency with Required Measure 11 of CVMSHP Section 4.3.21. Mitigation Measure AES-1 discusses plans for artificial nighttime lighting given the Project's location adjacent to the Santa Rosa and San Jacinto Mountains Conservation Area. To be consistent with Land Use Adjacency Guidelines (CVMSHCP Section 4.5), CDFW recommends changes to Mitigation Measure AES-1, which are discussed in the Artificial Nighttime Lightning section of this comment letter.

## **ENVIRONMENTAL DATA**

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

## **ENVIRONMENTAL DOCUMENT FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSIONS**


CDFW appreciates the opportunity to comment on the MND to assist the City of La Quinta in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources, including nesting birds and wildlife impacted by artificial nighttime lighting. CDFW recommends that prior to adoption of the MND, the City of La Quinta revise the document to include a more complete assessment of the Project's potential impacts on biological resources, as well

Cheri Flores, Planning Manager  
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as appropriate avoidance, minimization, and mitigation measures to reduce impacts to a level that is less than significant.

CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Environmental Scientist, at [jacob.skaggs@wildlife.ca.gov](mailto:jacob.skaggs@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84F92FFEEFD24C8...

Kim Freeburn  
Environmental Program Manager

**Attachment 1: MMRP for CDFW-Proposed Mitigation Measures**

ec:

Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW  
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**ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

Mitigation Measures	Timing and Methods	Responsible Parties
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<p><b>Mitigation Measure BIO-2: Nesting Birds</b></p> <p><b>Nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</b></p> <p><del>If unavoidable Project construction activities must begin during the nesting bird season (February 1<sup>st</sup> through August 31<sup>st</sup>), a pre-construction nesting bird survey shall be conducted no more than 14 days prior to initiation of ground disturbance and vegetation removal activities. The nesting preconstruction bird survey shall be conducted by a biologist familiar with identification of avian species known to occur in Riverside County. The nesting bird survey shall be conducted on foot inside the project boundary, including a 300-foot buffer for passerines (song birds) and 500-foot buffer for raptors in areas of suitable habitat. Inaccessible areas will be surveyed using binoculars to the extent practical. If nests are found, an avoidance buffer (dependent upon species, the proposed work activity, the existing disturbances associated with land uses outside of the site) shall be determined and demarcated by the biologist with bright orange construction fencing, flagging, construction lathe, or other means to mark the boundary. If a raptor nest is observed in a tree proposed for removal, the</del></p>	<p><b>Timing:</b> No more than three days prior to vegetation removal or ground-disturbing activities</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> Project applicant</p> <p><b>Monitoring and Reporting:</b> City of La Quinta</p>
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<p><del>applicant must consult with CDFW. All construction personnel be notified of the existence of the buffer zone and to avoid entering the buffer zone during nesting season. No ground disturbing activities shall occur within this buffer area until the avian biologist has confirmed the breeding/nesting is completed and the young have fledged. Encroachment into the buffer shall occur only at the discretion of the qualified biologist.</del></p>		
<p><b>Mitigation Measure AES-1: Artificial Nighttime Lighting</b></p> <p><b>During Project construction and long-term operation, the Project shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. Ensure that all lighting for Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare onto other properties—including any areas of the adjacent Santa Rosa and San Jacinto Mountains Conservation Area—or upward into the night sky (see the International Dark-Sky Association standards at <a href="http://darksky.org/">http://darksky.org/</a>). Use LED lighting with a correlated color temperature of 3,000 Kelvins or less, properly dispose of hazardous waste, and recycle lighting that contains toxic compounds with a qualified recycler. The Project developer shall ensure that all ambient lighting of landscape features are oriented facing away from the mountainside and into the property so that the surrounding conservation area is not impacted by unnatural light sources.</b></p>	<p><b>Timing:</b> During Project construction and long-term operation.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> Project applicant</p> <p><b>Monitoring and Reporting:</b> City of La Quinta</p>