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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

March 16, 2023
Sent via e-mail

Ben Torres
Planning Manager
City of Rancho Mirage
69825 Highway 111
Rancho Mirage, CA 92270

RANCHO MIRAGE SPECIFIC PLAN AMENDMENT (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2023020253

Dear Mr. Torres:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Rancho Mirage for the Project 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. CDFW also appreciates the extension granted by the City of Rancho Mirage to CDFW to submit comments by March 17, 2023. 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 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: City of Rancho Mirage

Objective: The objective of the Project is to construct a mixed-use community consisting of up to 400 residential units and a maximum of 150,000 square feet of commercial retail space, open space, parks, and recreation areas, and roadway improvements on approximately 35 acres of vacant, undeveloped land. The proposed project involves a

[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.

Specific Plan Amendment to allow for these uses within the Monterey Specific Plan, as well as a General Plan Zoning Map Amendment and a Preliminary Development Plan.

Location: The Project is located west of Monterey Avenue, south of Dinah Shore Drive and north of the Dick Kelly Drive/Ginger Rogers Road alignment in the City of Rancho Mirage, Riverside County, California (33.797037°, -116.390550°). The Project encompasses Accessor's Parcel Numbers: 685-090-002, -003, -005, -006, and -007. Lands surrounding the parcels are developed to the north and east and are vacant to the south and west. The Project's parcels are located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) boundary. The Project is within the Indio subbasin of the Coachella Valley Groundwater Basin.

Timeframe: None provided.

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 Rancho Mirage 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) to biological resources and whether those impacts are less than significant. CDFW offers the following comments and recommendations to assist the City of Rancho Mirage in adequately identifying and mitigating the Project's significant, or potentially significant, impacts to biological resources.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. The MND bases its analysis of impacts to biological resources on a report by James W. Cornett Ecological Consultants, which conducted a general biological resources assessment of the Project site in August and September of 2021 (Appendix A of the MND). CDFW is concerned about the potential for special-status species, including those not covered under the CVMSHCP, to occur on the Project site. The biological resources assessment is outdated and was not conducted at the appropriate time(s) of year or using standard protocols to detect all special-status species on-site. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Recent surveys during the appropriate times of the year are needed to inform appropriate avoidance, minimization, and mitigation measures, as well as to determine whether impacts to biological resources have been mitigated to a level that is less than significant. Additionally, CDFW is concerned that the lack of disclosure of the timeline of project activities in the MND likely provides an incomplete assessment of Project-related impacts to biological resources.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Timeframe of Project Activities

Rancho Monterey Specific Plan Amendment Proposal document, Section #1.5, Page #8 and Section #4.4, Page #61

Issue: The MND has not disclosed a timeline of project activities.

Specific impact: The Rancho Monterey Specific Plan Amendment Proposal document states (p. 8) that the Specific Plan Amendment intends to provide flexibility for future developers for the proposed multi-year project development. However, in the interim period between Project approval and implementation of Project activities, environmental conditions may change. The MND does not analyze impacts to biological resources associated with the timing of project activities. For instance, the Rancho Monterey Specific Plan Amendment Proposal document (p. 61) indicates that

parcels may be graded and then left inactive for up to 6 months. Grading and leaving a site inactive may result in the area becoming occupied by wildlife that utilize disturbed areas (e.g., ground squirrels and burrowing owl). The Project proponent should plan to repeat surveys for biological resources prior to Project-activities over the life of the Project.

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

CDFW Recommendation: The MND should include the timing of Project activities The MND should also analyze impacts to biological resources resulting from an extended timeline for Project activities and pauses in construction. The MND should acknowledge that surveys for biological resources will need to be repeated prior Project activities and after pauses in construction to assess the presence of biological resources and to avoid or reduce impacts to less than significant. The MND should acknowledge that wildlife may move into disturbed or graded sites when construction is paused. Analysis and appropriate mitigation measures to avoid and reduce impacts to biological resources resulting from the timing of construction for the Project should be included in a revised MND.

II. Project Proponent Proposed Mitigation Measures and Related Impacts

COMMENT #1: Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), Existing MM BR-1

Section #4, Page #53

Issue: The Project occurs within the CVMSHCP plan area and is subject to provisions and policies of the CVMSHCP.

Specific impact: The Project does not occur within or share a common boundary with a Conservation Area of the CVMSHCP; however, the Thousand Palms Conservation Area is 1.5 miles northeast of the Project. Although this area is surrounded by development, it may still receive deposition of blowsand from the Whitewater River floodplain that would support CVMSHCP-covered species. The following species were detected on the Project site that are covered under the CVMSHCP: Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*), Coachella Valley fringe-toed lizard (*Uma inornata*), and Palm Springs ground squirrel (*Spermophilus tereticaudus chlorus*). The MND states the project site is suitable habitat for the following species covered under the CVMSHCP: Coachella Valley Jerusalem cricket (*Stenopelmatus cahuilaensis*), Coachella Valley giant sand-treader cricket (*Macrobaenetes valgum*), and Palm Springs pocket mouse (*Perognathus longimembris bangsi*). To be considered a covered activity, Permittees should demonstrate that proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. The City of Rancho Mirage is the Lead Agency and a Permittee of the CVMSHCP.

Evidence impact would be significant: 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/.

CDFW Recommendation: CDFW supports the inclusion of MM BR-1 as given in the MND. CDFW also recommends that the MND include recommendations regarding landscaping from Section 4.0 of the CVMSHCP "Table 4-112: Coachella Valley Native Plants Recommended for Landscaping" (pp. 4-180 to 4-182; https://cvmshcp.org/Plan_Documents.htm).

COMMENT #2: Burrowing Owl Surveys, Existing MM BR-2

Section #4, Page #52-53

Issue: CDFW is concerned that habitat assessments for burrowing owl are outdated, and Mitigation Measure BR-2 is not sufficient to ensure that potential impacts to burrowing owl are mitigated to a level less than significant.

Specific impact: Impacts to burrowing owl from the Project could include take of burrowing owls, their nests or eggs, or destroying nesting or foraging habitat; impacting burrowing owl populations through changes in vegetation via the destruction, conversion, or degradation of burrowing owl habitat. The MND states the Project site has suitable habitat for the owl and active burrows of the species have been found within two miles. The MND also states that burrowing owl can take residence on the site at any time. Due to the potential for burrowing owl to move into disturbed sites, CDFW recommends that prior to commencing Project activities, surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). CDFW recommends the revised MND include specific avoidance and minimization measures to ensure that impacts to burrowing owls are reduced to less than significant.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern. 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. 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.). Burrowing owl is a Covered Species under the CVMSHCP, which requires that avoidance and minimization measures be implemented for this species.

Recommended Potentially Feasible Mitigation Measure(s)

CDFW recommends revising MM BR-2 as follows (additions are shown in **bold**; deletions are shown with ~~strikethrough~~):

MM BR-2: Burrowing Owl Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation*. If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered

as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. ~~The project proponent shall ensure that burrowing owl clearance survey is performed not more than 14 days prior to project site disturbance (clearing, grubbing, grading, construction). If any owls are identified, the most current protocol established by the California Department of Fish and Wildlife (Burrowing Owl Mitigation) must be followed. It is also recommended that a survey take place 24 hours prior to ground disturbance as burrowing owls may colonize or recolonize the site within the time between the original survey and project activities.~~

III. CDFW Proposed Mitigation Measures or Related Impacts

COMMENT #1: Special-Status Plants

Section #4, Page #51-52

Issue: CDFW is concerned that habitat assessments for special-status plants were not conducted at the appropriate time(s) of year to detect all special-status plants that could occupy the Project area.

Specific impact: The MND indicates no special-status plants were observed during the biological assessments in August and September of 2021 and acknowledges the timing of the surveys could be insufficient to detect all potential special-status plant species. The MND does indicate the potential for the following special-status plants, not covered under the CVMSHCP, to occur: glandular ditaxis (*Ditaxis clariana*), ribbed cryptantha (*Cryptantha costata*), flat-seeded spurge (*Chamaesyce platysperma*), and Salton milkvetch (*Astragalus crotalariae*). Based on a review of the California Natural Diversity Database (CNDDB) and Biogeographic Information and Observation System (BIOS), the following plant species that are state and/or federally listed as endangered and plant species with California Rare Plant Ranks of 1B and 2B have the potential to occur in the Project area: Horn's milkvetch (*Astragalus hornii* var. *hornii*).

If the presence of special-status plant species is not determined through floristic-based surveys, unauthorized take or disturbance of special-status plant species not covered by the CVMSHCP could occur. CDFW recommends that a thorough, recent, floristic-based assessment of special-status plants is completed at the appropriate time(s) of year before the City of Rancho Mirage adopts the MND. The results of this assessment should be included in a revised MND. If any rare, threatened, endangered, or other sensitive plant species are located within the Project site, CDFW recommends that the MND be revised to include appropriate avoidance, minimization, and mitigation measures.

Evidence impact would be significant: The California Rare Plant Rank 1B indicates plants that are rare, threatened, or endangered in California and elsewhere, and California Rare Plant Rank 2B indicates plants that are rare, threatened, or endangered

in California but more common elsewhere. Impacts to these species must be analyzed during preparation of environmental documents relating to CEQA because they meet the definition of rare or endangered under CEQA Guidelines §15125 (c) and/or §15380.

Recommended Potentially Feasible Mitigation Measure(s)

MM BIO-[A]: Special-Status Plant Surveys

A thorough floristic-based assessment of special-status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018 or most recent version) shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain an Incidental Take Permit for those species not covered under the CVMSHCP prior to the start of Project activities.

COMMENT #2: Nesting Birds

Section #4, Page #52-53

Issue: The MND does not analyze potential impacts to nesting birds.

Specific impact: The MND documents the observance of five nesting bird species during the biological assessments conducted in August and September of 2021. CDFW is concerned about impacts to nesting birds from ground-disturbing activities and construction. CDFW recommends the revised MND 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 are not limited to, Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. 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.** Preconstruction nesting bird surveys shall be performed within 3 days prior to Project activities to determine the presence and location of nesting birds.

Evidence impact would be significant: 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 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.).

Recommended Potentially Feasible Mitigation Measure(s)

MM BIO-[B]: Avoidance of 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.

COMMENT #3: Desert Kit Fox and American Badger

Issue: The MND does not adequately analyze impacts to desert kit fox and does not analyze impacts to American badger.

Specific impact: BIOS data layers showing connectivity modeling for the California Desert Linkage Network indicate that the Project site falls within high probability, core breeding habitat for kit fox. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found on-site during breeding season, it could delay Project activities for the length of the breeding season.

BIOS data layers showing predicted habitat indicate that the Project site falls near highly likely, core foraging habitat for American badgers. American badgers are nocturnal, and it is crucial to adequately assess whether they are present on the Project site well in advance of commencing Project activities. If American badgers are found on-site during breeding season, it could delay Project activities for the length of the breeding season.

Evidence impact would be significant: Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, § 460) and may not be taken at any time. American badgers are listed as a California Species of Special Concern (SSC).

Recommended Potentially Feasible Mitigation Measure(s)

MM BIO-[C]: Desert Kit Fox Surveys

Prior to commencing Project activities, a qualified biologist shall conduct a focused survey for desert kit fox, including assessment of all burrows in the Project area. If potential burrows are located, they should be monitored by the qualified biologist. If a burrow is determined to be active, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.

MM BIO-[D]: American Badger Surveys

No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a qualified biologist shall conduct a survey to determine if potential American badger burrows are present in the Project area. If potential burrows are located, they shall be monitored using the best judgement of the qualified biologist. If the burrow is determined to be active, the qualified biologist shall flag and create a 50-foot buffer around the den. If impacts to the den are unavoidable, the qualified biologist will verify there are suitable burrows in avoided habitat within the Project area or outside of the Project area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3- to 5-day period. After the qualified biologist has determined there are no active burrows, the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

COMMENT #4: Desert Tortoise

Section #4, Page #50

Issue: CDFW is concerned that no focused surveys were conducted for desert tortoise and that the field assessments for desert tortoise cited in the MND are outdated.

Specific impact: The Project may have a significant impact on desert tortoise (*Gopherus agassizii*), both during Project construction and as a result of habitat loss. The field assessment for the MND was conducted in 2021, which is now outdated. Take of desert tortoise may occur as a result of Project-related activities such as grading, ground disturbance, and vegetation clearing and may result in crushing of desert tortoises and occupied burrows from construction equipment, vehicles, and foot traffic. The Project site lies within the known distribution of desert tortoise (CNDDB) and the Project site could support habitat for the desert tortoise.

Evidence impact would be significant: Desert tortoise is listed as a threatened species under CESA and is proposed for up-listing to an endangered species under CESA. Although desert tortoise is covered under the CVMSHCP, Section 9.6.1.4 of the plan indicates: “Both inside and outside Conservation Areas, avoidance, minimization, and mitigation measures require relocation of individual tortoises if required surveys locate individuals on the site of Covered Activities. For more information about avoidance, minimization, and mitigation measures see Section 4.4.”

Recommended Potentially Feasible Mitigation Measure(s)

CDFW recommends that prior to commencing Project activities, both focused and preconstruction surveys for desert tortoise should be conducted by a qualified biologist. As a result, CDFW recommends adding the following mitigation measure:

MM BIO-[E]: Desert Tortoise Surveys

Prior to commencing Project activities throughout all phase of the Project, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in *Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise* (USFWS 2019; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf), during the species’ most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that

biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys. If desert tortoise is found to be present, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

No more than 14 calendar days prior to start of Project activities and after any pause in Project activities lasting 30 days or more, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS 2019 desert tortoise survey methodology (*Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise*; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). Pre-construction surveys shall be completed using perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign within the Project area and 50-foot buffer zone. Pre-activity surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the surveys shall be submitted to CDFW prior to construction start. If the pre-construction surveys confirm desert tortoise absence, the qualified biologist shall ensure desert tortoise do not enter the Project area. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

COMMENT #5: Minimizing Impacts to Other Species

Issue: The MND does not analyze impacts to non-listed, non-special-status terrestrial wildlife.

Specific impact: The MND states that the Project site provides suitable foraging and cover habitat for reptilian and invertebrate species, suitable foraging and nesting habitat for avian species, and suitable foraging and denning habitat for mammalian species, and lists common species identified during the biological survey but includes no avoidance and minimization measures. Because of the potential for previously undetected wildlife to occur on the Project site, CDFW recommends inclusion of a mitigation measure to allow non-listed, non-special-status terrestrial wildlife to leave or be moved out of harm's way.

Recommended Potentially Feasible Mitigation Measure(s)

MM BIO-[F]: Minimizing Impacts to Other Species

To avoid impacts to terrestrial wildlife, a qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Individuals of any wildlife species found shall not be harassed and shall be allowed to leave the Project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-special-status wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the Project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs, and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat nearby the site of capture. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with appropriate authorization by CDFW shall move CESA-listed or other special-status species.

COMMENT #6: Noise

Section #13, Page #132-133

Issue: The MND does not analyze impacts to biological resources from construction noise.

Specific impact: The MND states “equipment used during the construction phases would generate both steady state and episodic noise that would be heard both on and off the project site,” but includes no analysis of the impacts of construction noise on biological resources. The MND indicates noise levels have the potential to reach 38.7 to 60.4 dBA during the hours when construction is permitted, which exceeds exposure levels that may adversely affect wildlife species (55 to 60 dBA). Because of the potential for construction noise to negatively impact wildlife, CDFW recommends the revised MND include an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant.

Evidence impact would be significant: Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cures (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

Recommended Potentially Feasible Mitigation Measure(s)

Because of the potential for construction noise to negatively impact wildlife, CDFW recommends a revised MND include the following mitigation measure:

MM BIO-[G]: Noise

During all Project construction, the City of Rancho Mirage shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. The City shall ensure use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

COMMENT #7: Artificial Light

Section #1, Page #32-33

Issue: The MND does not analyze impacts to biological resources from artificial light.

Specific impact: The MND indicates that the development on the Project will introduce new sources of lighting, including streetlights, tree lights, and security lighting; however, impacts to biological resources are not analyzed and no mitigation measures are proposed. The direct and indirect impacts of artificial nighttime lighting on biological

resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures should be included in the revised MND.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial 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 (Gatson et al. 2013). Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Recommended Potentially Feasible Mitigation Measure(s)

Because of the potential for artificial lighting at night to negatively impact wildlife, CDFW recommends a revised MND include the following mitigation measure:

MM BIO-[H]: Artificial Light

During Project construction and operation, the City of Rancho Mirage 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. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City shall ensure use LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City of Rancho Mirage in identifying and mitigating Project impacts on biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant,

or potentially significant impacts on biological resources. CDFW recommends that prior to adoption of the MND, the City of Rancho Mirage revise the document to include a more complete assessment of the Project's potential impacts on biological resources as well as appropriate avoidance, minimization, and mitigation measures to reduce impacts to a level 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 Alyssa Hockaday, Senior Environmental Scientist (Specialist) at (760) 920-8252 or Alyssa.Hockaday@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
84F92FFEEFD24C8...

Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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

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

Biological Resources (BIO)		
Mitigation Measure (MM) Description	**Implementation Schedule**	**Responsible Party**
MM BR-2: Burrowing Owl Surveys Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation*. If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, minimization, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe relocation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls along with proposed relocation actions. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval. Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities.	**Focused surveys:** Prior to the start of Project-related activities. **Pre-construction surveys:** No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.	City of Rancho Mirage
MM BIO-[A]: Special-Status Plant Surveys A thorough floristic-based assessment of special-status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018 or most recent version) shall be performed by a qualified biologist prior to commencing Project activities. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain an Incidental Take Permit for those species not covered under the CVMSHCP prior to the start of Project activities.	Prior to commencing Project activities.	City of Rancho Mirage
MM BIO-[B]: Avoidance of 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	No more than three (3) days prior to vegetation clearing or	City of Rancho Mirage

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.	ground-disturbing activities.	
MM BIO-[C]: Desert Kit Fox Surveys Prior to commencing Project activities, a qualified biologist shall conduct a focused survey for desert kit fox, including assessment of all burrows in the Project area. If potential burrows are located, they should be monitored by the qualified biologist. If a burrow is determined to be active, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures. No more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-construction surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-construction surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-construction surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.	**Focused surveys:** Prior to the start of Project-related activities. **Pre-construction surveys:** No more than 14 days prior to start of Project-related activities.	City of Rancho Mirage
MM BIO-[D]: American Badger Surveys No more than 30 days prior to the beginning of ground disturbance and/or construction activities, a qualified biologist shall conduct a survey to determine if potential American badger burrows are present in the Project area. If potential burrows are located, they shall be monitored using the best judgement of the qualified biologist. If the burrow is determined to be active, the qualified biologist shall flag and create a 50-foot buffer around the den. If impacts to the den are unavoidable, the qualified biologist will verify there are suitable burrows in avoided habitat within the Project area or outside of the Project area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3- to 5-day period. After the qualified biologist has	**Pre-construction surveys:** No more than 30 days prior to start of Project-related activities.	City of Rancho Mirage

determined there are no active burrows, the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.		
MM BIO-[E]: Desert Tortoise Surveys Prior to commencing Project activities throughout all phase of the Project, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise (USFWS 2019; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf), during the species' most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys. If desert tortoise is found to be present, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures. No more than 14 calendar days prior to start of Project activities and after any pause in Project activities lasting 30 days or more, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS 2019 desert tortoise survey methodology (Preparing for Any Action that May Occur within the Range of the Mojave Desert Tortoise; https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf). Pre-construction surveys shall be completed using perpendicular survey routes and 100-percent visual coverage for desert tortoise and their sign within the Project area and 50-foot buffer zone. Pre-activity surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Results of the surveys shall be submitted to CDFW prior to construction start. If the pre-construction surveys confirm desert tortoise absence, the qualified biologist shall ensure desert tortoise do not enter the Project area. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.	**Focused surveys:** Prior to the start of Project-related activities. **Pre-construction surveys:** No more than 14 days prior to start of Project-related activities.	City of Rancho Mirage
MM BIO-[F]: Minimizing Impacts to Other Species To avoid impacts to terrestrial wildlife, a qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Individuals of any wildlife species found shall not be harassed and shall be allowed to leave the Project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-special-status wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed	Prior to and during Project activities.	City of Rancho Mirage

to leave the Project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs, and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat nearby the site of capture. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with appropriate authorization by CDFW shall move CESA-listed or other special-status species.		
MM BIO-[G]: Noise During all Project construction, the City of Rancho Mirage shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. The City shall ensure use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.	During Project activities.	City of Rancho Mirage
MM BIO-[H]: Artificial Light During Project construction and operation, the City of Rancho Mirage 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. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City shall ensure use LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.	During Project activities.	City of Rancho Mirage