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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

March 23, 2023
Sent via e-mail.

Carlos Flores
Senior Planner
City of La Quinta
78495 Calle Tampico
La Quinta, CA 92253

Troutdale Village Specific Plan (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2023030161

Dear Mr. Flores:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of La Quinta 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. 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: Troutdale Village, LLC

Objective: The objective of the Project is to develop the Troutdale Village Specific Plan Amendment No. 3, which consists of 284 dwelling units in the City of LaQuinta in Riverside County, California. The development includes eleven residential two-and three-story buildings, landscaping, utility infrastructure, paved parking spaces, a paved access road around the interior of the site, storm drain, water and sewer improvements, and two retention basins constructed along the western side of the Project site to collect and store

[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.

storm runoff. Equipment will include rubber-tired dozers, tractors, loaders, backhoes, excavators, graders, and scrapers.

Location: The Project is located at the northeast corner of the intersection of Washington Street and Avenue 50 in the City of La Quinta, Riverside County, California; APN: 646-070-016; GPS Coordinates: 33.68612908, -116.293914.

Timeframe: The Project was estimated to start as soon as possible in 2022 and to be completed in 2023. The phases of construction activities will include site preparation, grading, building, paving, and architectural coating.

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). 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 comments and recommendations below to assist the City of LaQuinta in adequately identifying and/or mitigating the project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. In addition to the sections below, CDFW has the following concerns and comments.

Existing Environmental Setting

Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting has not been adequately analyzed in the MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, 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.

The MND bases its analysis of impacts to biological resources on a report by ELMT Consulting, which conducted a field assessment on November 3, 2021. The field assessment included walking transects of the site to evaluate the presence of plant communities as well as observing "scat, trails, tracks, burrows, nests, and/or visual and aural observations" to detect the presence of wildlife species (Biological Resources Report, p. 2). The Biological Resources Report also notes that "most mammal species are nocturnal and are difficult to observe during a diurnal field visit" (Biological Resources Report, p. 5). CDFW is concerned that the field assessment was not conducted at the appropriate time of year and was not specific enough in scope to determine the presence of special-status species on the Project site. The field assessment included no focused surveys for special-status species such as special-status plants, desert tortoise, burrowing owl, and burrowing mammals. Focused surveys usually involve multiple visits to the Project area during various seasons and weather conditions to properly assess whether special-status species are present on the Project site. In addition, the survey is now more than a year old. CDFW generally considers field assessments for wildlife valid for a 1-year period and field assessments for plants valid for a 3-year period.

Mitigation Measures

CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to below a level of significance. To support the City of LaQuinta in ensuring that Project impacts to biological resources are reduced to a level that is less than significant, CDFW recommends revising Mitigation Measures BIO-1 and BIO-2, as well as including additional mitigation measures for burrowing owl, desert tortoise, special-status plants, minimizing impacts to other species, artificial nighttime lighting, construction noise, and CDFW's Lake and Streambed Alteration Program, as described below.

I. Shortcomings in Proposed Mitigation Measures, Alternatives, and Related Impacts

COMMENT #1: Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and Existing Mitigation Measure BIO-2

Section #3.4, Pages #30-31

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

Specific impact and why impact would occur: The Project occurs within the CVMSHCP area and is subject to provisions and policies of the CVMSHCP. The Project is not located within a designated CVMSHCP Conservation Area; however, the Santa Rosa and San Jacinto Mountains Conservation Area is located approximately 1.5 miles west and 1 mile north and south of the Project site. To be considered a covered activity, Permittees should demonstrate that the proposed actions are consistent with the CVMSHCP and its associated Implementing Agreement. The City of La Quinta is the Lead Agency and a Permittee of the CVMSHCP.

Evidence impact is 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/.

Recommended Potentially Feasible Mitigation Measure

CDFW recommends replacing existing Mitigation Measure BIO-2 with the following mitigation measure to reduce impacts to less than significant:

MM BIO-2: CVMSHCP Compliance

> **Prior to construction and issuance of any grading permit, the City of La Quinta shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee.**

COMMENT #2: Nesting Bird Surveys and Existing Mitigation Measure BIO-1

Section # 2.4, Page #6

Issue: CDFW is concerned that Mitigation Measure BIO-1 is not sufficient in timing or scope to prevent impacts to nesting birds.

Specific impact and why impact would occur: Based on a review of the California Natural Diversity Database (CNDDB) and Biogeographic Information and Observation System (BIOS), as well as the MND Biological Resources Report, the Project has the potential to impact avian species that nest and forage in the region including, but not limited to, mourning dove (*Zenaida macroura*), common raven (*Corvus corax*), great-tailed grackle (*Quiscalus mexicanus*), white crowned sparrow (*Zonotrichia leucophrys*), northern mockingbird (*Mimus polyglottos*), American kestrel (*Falco sparverius*), rock

pigeon (*Columba liva*), verdin (*Auriparus flaviceps*), black-tailed gnatcatcher (*Polioptila melanura*), and prairie falcon (*Falco mexicanus*). CDFW is concerned about the impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and construction. Additionally, the timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that climate change conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird surveys regardless of time of year to ensure compliance with all applicable laws pertaining to nesting and migratory 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: 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

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. CDFW recommends replacing existing Mitigation Measure BIO-1 with the following mitigation measure to reduce impacts to less than significant:

MM BIO-1: Nesting Bird Surveys

> **Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than three (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 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 should be at least 300 feet for passerines and 500 feet for raptors and birds-of-prey. 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: Burrowing Owl (*Athene cunicularia*)

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to burrowing owl nor ensure impacts are mitigated to a level less than significant.

Specific impact and why it would occur: The Biological Resources Report notes that the "project site provides line-of-sight opportunities favored by burrowing owls; however, no suitable burrows (>4 inches in diameter) are present" and that "no burrowing owls or signs were observed" (Biological Resources Assessment, Table D-1). CDFW is concerned that the field assessment conducted on November 3, 2021, for the MND is outdated and not sufficient in timing and scope to detect burrowing owl on the Project site. Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs; destroying nesting or foraging habitat; or impacting burrowing owl populations through changes in vegetation via the destruction, conversion, or degradation of burrowing owl habitat. Impacts to burrowing owls can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, and other activities. Changes in vegetation can result from the destruction, conversion, or degradation of nesting, foraging, or over-wintering habitats; destruction of natural burrows; and general Project disturbance that has the potential to harass owls at occupied burrows. The Project will involve grading and removal of existing vegetation to make way for the development. If burrowing owl burrows are not properly detected, below-ground disturbance, site preparation, and grading could destroy habitat and result in take of burrowing owl.

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.). Take is defined in Fish and Game Code section 86 as "hunt, pursue, capture or kill, or attempt to hunt, pursue, catch, capture, or kill." 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

Due to the potential for burrowing owl to move into disturbed sites, CDFW recommends that prior to commencing Project activities, focused and preconstruction 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. CDFW recommends the revised MND include the following mitigation measure to reduce impacts to less than significant:

MM BIO-[A]: Burrowing Owl Surveys

Prior to the start of Project activities, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent 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* (CDFG 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.

COMMENT #4: Desert Tortoise (*Gopherus agassizii*)

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to desert tortoise nor ensure impacts are mitigated to a level less than significant.

Specific impact and why impact would occur: According to the MND, no desert tortoises were detected during the initial field assessment conducted on November 3, 2021. CDFW is concerned that the field assessment was insufficient in timing and scope to detect desert tortoise on the Project site. The field assessment is outdated and was conducted at the wrong time of year to detect desert tortoise. Chapter 4 of the *Desert Tortoise (Mojave Population) Field Manual* indicates that "surveys should be conducted during the desert tortoise's most active periods (April through May or September through October)" (USFWS, 2009, p. 4-8). Based on a review of CNDDB and BIOS, the Project site is within the range of desert tortoise, and vegetation on the Project site provides suitable habitat for desert tortoise. If presence of desert tortoise is not adequately determined, potentially significant impacts to desert tortoise could occur. 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. Construction and grading on construction sites may crush tortoise burrows, an important refuge for tortoises from the desert heat and from predation (Zeiner et al. 1990). This could lead to increased mortality. In addition, vegetation removal can decrease habitat availability for 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." Additionally, desert tortoise populations have declined significantly in recent decades as a result of human activities in their native habitat including land development, off-road vehicle use, overgrazing, agricultural development, military activities, predation, and the spread of invasive plant species (USFWS, 2011). The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS, 2011).

Recommended Potentially Feasible Mitigation Measure

CDFW recommends that prior to commencing Project activities, both focused and preconstruction surveys for desert tortoise should be conducted by a qualified biologist. CDFW recommends that the revised MND include the following mitigation measure to reduce impacts to less than significant:

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

Issue: CDFW is concerned that field assessment for the MND was not sufficient in timing or scope to detect special-status plant species, including those not covered by the CVMSHCP, that may occur on the Project site.

Specific impact and why impact would occur: The MND indicates that no special-status plants were observed during the field assessment conducted on November 3, 2021. CDFW is concerned that the field assessment was not conducted at the appropriate time of year to detect special-status plants on the Project site. 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 a thorough, floristic-based assessment of special-status plants at the appropriate time of year be conducted, usually involving multiple visits to the Project area, as described below.

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

CDFW recommends that the revised MND include the following mitigation measure to reduce impacts to special-status plants to less than significant:

MM BIO-[C]: 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 #6: Minimizing Impacts to Other Species

Section # 3.4, Page #27

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

Specific impact and evident the impact would be significant: The MND states that the Project site provides suitable foraging and cover habitat for reptilian 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. The MND acknowledges in the Biological Resource Report that surveys may not be adequate in detecting all species that may be present on the Project site, noting that "most mammal species are nocturnal and are difficult to observe during a diurnal field visit" (Biological Resources Report, p. 5). Brief, one visit assessments are limited by the seasonal timing and short duration of the survey period. CDFW is concerned about the potential for previously undetected wildlife to occur on the Project site and to be injured or killed by ground-disturbing and construction activities.

Recommended Potentially Feasible Mitigation Measure

To reduce impacts to less than significant, 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.

MM BIO-[D]: 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 #7: Artificial Light

Section #3.1.3, Page #17

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

Specific impact and why impact would occur: The MND indicates that the development on the Project will introduce new sources of lighting, including streetlights 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 to reduce impacts to less than significant 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

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-[E]: Artificial Light

> **During Project construction and operation, the City of La Quinta 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.**

COMMENT #8: Construction Noise

Section #3.13.3, Page #52

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

Specific impact and why impact would occur: The MND states that “construction noise would occur due to the use of equipment that includes a combination of trucks, power tools, concrete mixers, and portage generators that when combined can reach high levels,” but includes no analysis of the impacts of construction noise on biological resources. The MND indicates that noise levels would be highest during grading due to use of “a grader, a dozer, two (2) excavators, two (2) backhoes, and a scraper” and that noise levels may reach 70 to 74 dBA. Other construction phases are estimated to generate noise between 63 and 66 dBA, 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

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

MM BIO-[F]: Construction Noise

> **During all Project construction, the City of La Quinta 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 #9: CDFW Lake and Streambed Alteration (LSA) Program

Section #3.4.3, Page #29

Issue: A flood control channel occurs east of the Project site.

Specific Impact and why impact would occur: The MND indicates that a flood channel occurs east of the Project site outside the proposed limits of disturbance. The MND has not adequately analyzed potential impacts, including indirect impacts such as construction noise, to biological resources that use the flood channel. In addition, the MND does not include avoidance, minimization, and mitigation measures to prevent impacts from Project-related construction, including staging and access, to either the flood channel or biological resources that use the flood channel.

Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the

flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

Recommended Potentially Feasible Mitigation Measure

MM BIO-[G]: CDFW Lake and Streambed Alteration Program

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

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 La Quinta 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 the 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 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 Claire.Sullivan@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
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Kim Freeburn
Environmental Program Manager

Attachment 1, MMRP for CDFW-Proposed Mitigation Measures

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP

Biological Resources (BIO)		
Mitigation Measure (MM) Description	**Implementation Schedule**	**Responsible Party**
MM BIO-2: CVMSHCP Compliance	Prior to construction and issuance of any	City of La Quinta

Prior to construction and issuance of any grading permit, the City of La Quinta shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee.	grading permit	
MM BIO-1: Nesting Bird Surveys Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than three (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 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 should be at least 300 feet for passerines and 500 feet for raptors and birds-of-prey. 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.	No more than 3 days prior to vegetation removal or ground disturbing activities	City of La Quinta
MM BIO-[A]: Burrowing Owl Surveys Prior to the start of Project activities, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent 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* (CDFG 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	**Focused Surveys:** Prior to commencing Project-related activities **Pre-construction surveys:** no less than 14 days prior to the start of Project-related activities and no more than 24 hours prior to ground disturbance	City of La Quinta

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.		
MM BIO-[B]: 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:** During the species' most active periods and prior to commencing Project-related activities **Pre-construction surveys:** no more than 14 days prior to the start of Project activities	City of La Quinta
MM BIO-[C]: 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	Prior to ground disturbance and at the appropriate time of year when plants will be both evident and identifiable	City of La Quinta

covered under the CVMSHCP prior to the start of Project activities.		
MM BIO-[D]: 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.	Throughout the duration of the Project	City of La Quinta
MM BIO-[E]: Artificial Light During Project construction and operation, the City of La Quinta 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 La Quinta
MM BIO-[F]: Construction Noise During all Project construction, the City of La Quinta 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 La Quinta
MM BIO-[G]: CDFW Lake and Streambed Alteration Program Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, *or* the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.	Prior to construction and issuance of any grading permit	Project proponent and City of La Quinta