



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



April 7, 2023
 Sent via e-mail

Pilar Lopez
 Associate Planner
 City of Rancho Mirage
 69-825 Highway 111
 Rancho Mirage, CA 92270

**VISTA DEL SOL 8-LOT SUBDIVISION (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH #: 2023030308**

Dear Ms. Lopez:

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 CDFW previously submitted comments in response to the MND for the Project to the City of Rancho Mirage on January 10, 2023.

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: City of Rancho Mirage

Objective: The objective of the Project is to subdivide two existing parcels (APNs: 685-280-002 and -003) into eight residential lots and three lettered lots, including a private street. The Project site is 10.12 acres, and the residential lot sizes range from 43,700 square feet to 66,229 square feet. Construction is expected to occur in five phases, including site preparation, grading, building construction, paving, and architectural coating.

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.

Location: The proposed Project is located along the east side of Vista Del Sol, just east of Eisenhower Medical Center and west of Vista Dunes Road in the City of Rancho Mirage, Riverside County, California (33.764244°, -116.396440°). The Project encompasses Accessor's Parcel Numbers 685-280-002 and 685-280-003. Lands surrounding the parcels to the north, west, and south are undeveloped vacant land, whereas lands surrounding the parcels to the east are developed residential units. 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: Construction is anticipated to begin in early 2023 and to be completed by early 2024.

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 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 ELMT Consulting, which conducted a baseline field assessment of the Project site on September 14, 2021 (Appendix B of the MND). CDFW is concerned about the potential for special-status species, including those not covered under the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), to occur on the Project site. The field 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. Furthermore, the mitigation measures provided in the MND are not adequate to protect special-status species as explained further in the following sections.

Circulation of CEQA Documents to the State Clearinghouse

CDFW appreciates that the City of Rancho Mirage has circulated its revised MND for this Project through the State Clearinghouse. CEQA requires lead agencies to submit draft environmental impact reports (EIR), proposed negative declarations (ND), and proposed mitigated negative declarations (MND) to the State Clearinghouse (SCH) at OPR when:

- A state agency is the lead agency, a responsible agency, or a trustee agency;
- A state agency otherwise has jurisdiction by law with respect to the Project; or
- The proposed Project is of statewide, regional, or areawide significance.²

CEQA's circulation, notice, and consultation requirements play a critical role in CDFW's trustee mandate to conserve the State's fish and wildlife resources for all the people of California.³ CDFW urges lead agencies to ensure environmental analyses are submitted to the State Clearinghouse as required by CEQA. Complying with these requirements, along with CEQA's responsible and trustee agency notice and consultation requirements, helps

to ensure responsible and trustee agency input from CDFW during lead agency environmental review.

For more information about the state environmental review process generally and State Clearinghouse procedures, download the [State Clearinghouse Handbook](#). You may also contact the State Clearinghouse by phone at (916) 445-0613 or email at state.clearinghouse@opr.ca.gov. OPR's [November 2005 Technical Advisory regarding document submittal to the State Clearinghouse](#) may be particularly helpful to interested lead agencies.

Assessment of Impacts to Biological Resources

Nesting Birds

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: 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.).

CDFW is concerned about impacts to nesting birds from ground-disturbing activities and construction. 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 appreciates the inclusion of MM BIO-1 as given in the revised MND.

Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)

Within the Inland Deserts Region, CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the CVMSHCP per Section 2800 et seq. of the California Fish and Game Code on September 9, 2008. The CVMSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit. Compliance with approved habitat plans, such as the CVMSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the CVMSHCP as a result of this Project is necessary to address CEQA requirements. To obtain additional information regarding the CVMSHCP please go to: <http://www.cvmshcp.org/>.

The Project occurs within the CVMSHCP area and is subject to provisions and policies of the CVMSHCP. The Project does not occur within or share a common boundary with a Conservation Area of the CVMSHCP; however, Santa Rosa and San Jacinto Mountains Conservation Area is 2.0 miles southwest of the Project and the Thousand Palms Conservation Area is 3.8 miles northeast of the Project. 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. CDFW recommends MM BIO-2 be revised as follows (additions are in **bold**, deletions are shown with ~~strike through~~):

MM BIO-2: CVMSHCP Compliance

Prior to construction and issuance of any grading permit, the City of Rancho Mirage 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. The Applicant shall pay the CVMSHCP Local Development Mitigation Fee prior to building permit issuance.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for proposed MM BIO-2 and 3, and [A] through [G] (see Attachment 1).

Burrowing Owl (*Athene cunicularia*)

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.

The MND (Appendices Table D-1) acknowledges that “the project site provides line-of-sight opportunities favored by burrowing owls.” Because the field assessment for the IS/MND is not recent and 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 do not occur. To ensure that impacts to burrowing owls are reduced to less than significant, CDFW recommends MM BIO-3 be revised as follows (additions are in **bold**, deletions are shown with ~~strikethrough~~):

MM BIO-3: Burrowing Owl Surveys

No less than 30 days prior to the start of Project-related activities, a burrowing owl habitat assessment shall be conducted by a qualified biologist according to the specifications of the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012 or most recent version).

If the habitat assessment demonstrates suitable burrowing owl habitat, then 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.

Pre-construction 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). Pre-construction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the pre-construction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.

Special-Status Plants

Based on review of the California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS), 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. 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.

The MND (Appendix B, p. 157) indicates that no special-status plants were observed during the baseline habitat assessment conducted on September 14, 2021. The desktop review states 13 special-status plant species and two special-status plant communities were identified in literature and database searches within the Cathedral City quadrangle, including species not covered by the CVMSHCP. CDFW is concerned that the baseline habitat assessment was not conducted at the appropriate time(s) of year to detect all special-status plants on the Project site. CNDDDB/BIOS indicates that the following special-status plants have historically occurred near the Project location: Horn's milk-vetch (*Astragalus hornii* var. *hornii*), glandular ditaxis (*Ditaxis clariana*), and flat-seeded spurge (*Chamaesyce platysperma*). 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. To ensure that impacts to special-status plants are reduced to less than significant, CDFW recommends including the following mitigation measure in a revised MND:

MM BIO-[A]: Special-Status Plants

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.

Desert Kit Fox (*Vulpes macrotis arsipus*) and American Badger (*Taxidea taxus*)

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. 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.

American badgers are listed as a California Species of Special Concern (SSC). 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.

The MND (p. 33) states that “the Project site provides suitable foraging and denning habitat for mammalian species.” The MND also acknowledges that most mammal species are nocturnal and are difficult to observe during a diurnal field visit. CDFW is concerned that the timing and scope of the baseline field assessment were not sufficient to assess whether desert kit fox or American badger are present on the Project site. Therefore, CDFW recommends that prior to commencing Project activities, pre-construction surveys for desert kit fox and American badger be conducted by a qualified biologist. To ensure that impacts to desert kit fox and American badger are reduced to less than significant, CDFW recommends the following mitigation measures be included in a revised MND:

MM BIO-[B]: Desert Kit Fox Surveys

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-[C]: 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.

Minimizing Impacts to Other Species

The MND (p. 33) 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. Because of the potential for previously undetected wildlife to occur on the Project site, CDFW recommends inclusion of the following 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 be 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.

Noise

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 cues (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).

The MND (p. 60) states “construction noise would occur due to the use of equipment that includes a combination of trucks, power tools, concrete mixers, and portable generators that when combined can reach high levels,” but includes no analysis of the impacts of construction noise on biological resources. The MND indicates noise levels have the potential to reach 67 to 71 dBA during the hours when construction is permitted (p. 60), which exceeds exposure levels that may adversely affect wildlife species. CDFW is concerned about impacts to wildlife from noise generated during Project activities. Although the MND includes Mitigation Measure (MM) N-1 and N-2 for noise, the timing and scope are insufficient to protect wildlife. 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 do not occur. To ensure impacts are reduced to less than significant, CDFW recommends the following mitigation measure be included in a revised MND:

MM BIO-[E]: Noise

During construction of the Project, 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 enclosures for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

Artificial Light

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).

The MND (p. 19) 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 should be included in the revised MND. Because of the potential for artificial nighttime lighting used during construction and during operation of the housing development to impact biological resources, CDFW recommends that the MND be revised to include the following mitigation measure to ensure impacts are reduced to less than significant:

MM BIO-[F]: Artificial Light

During Project construction and operations, the City of Rancho Mirage shall ensure that the Project eliminates all nonessential lighting throughout the Project area and avoids or limits 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, reduced in intensity to the greatest extent, 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 of 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.

Lake and Streambed Alteration Program

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.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the IS/MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To submit a Lake or Streambed Alteration notification, visit:
<https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Based on aerial imagery, ephemeral streams may occur on the Project site. To avoid or minimize adverse impacts to fish and wildlife resources identified above, CDFW recommends the following mitigation measure be added to the IS/MND:

MM BIO-[G]: Lake and Stream Alteration (LSA) Program

Prior to Project-activities 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 shall 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 (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link:
<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

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

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 for 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 ensure those impacts are mitigated 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:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

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REFERENCES

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party

<p>MM-BIO-2: CVMSHCP Compliance Prior to construction and issuance of any grading permit, the City of Rancho Mirage 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.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>City of Rancho Mirage</p>
<p>MM BIO-3: Burrowing Owl Surveys No less than 30 days prior to the start of Project-related activities, a burrowing owl habitat assessment shall be conducted by a qualified biologist according to the specifications of the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012 or most recent version).</p> <p>If the habitat assessment demonstrates suitable burrowing owl habitat, then 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.</p> <p>Pre-construction 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). Pre-construction surveys should be</p>	<p>Habitat assessment and focused surveys: No less than 30 days prior to start of Project-related activities.</p> <p>Pre-construction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.</p>	<p>City of Rancho Mirage</p>

<p>performed by a qualified biologist following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation. If the pre-construction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.</p>		
<p>MM-BIO-[A]: Special-Status Plants 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.</p>	<p>Prior to commencing Project activities.</p>	<p>City of Rancho Mirage</p>
<p>MM-BIO-[B]: Desert Kit Fox Surveys 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.</p>	<p>Pre-construction surveys: No more than 14 days prior to start of Project-related activities.</p>	<p>City of Rancho Mirage</p>
<p>MM BIO-[C]: 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</p>	<p>Pre-construction surveys: No more than 30 days prior to start of Project-related activities.</p>	<p>City of Rancho Mirage</p>

<p>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 3-5 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.</p>		
<p>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 be injured or killed, and individuals should be moved only as far as 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.</p>	<p>Prior to and during Project activities.</p>	<p>City of Rancho Mirage</p>
<p>MM-BIO-[E]: Noise During construction of the Project, 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</p>	<p>During Project activities.</p>	<p>City of Rancho Mirage</p>

<p>or enclosures for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source..</p>		
<p>MM-BIO-[F]: Artificial Light During Project construction and operations, the City of Rancho Mirage shall ensure that the Project eliminates all nonessential lighting throughout the Project area and avoids or limits 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, reduced in intensity to the greatest extent, 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 of 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.</p>	<p>During Project construction and operations.</p>	<p>City of Rancho Mirage</p>
<p>MM BIO-[G]: Lake and Stream Alteration (LSA) Program Prior to Project-activities 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.</p>	<p>Prior to Project-activities and issuance of any grading permit.</p>	<p>City of Rancho Mirage</p>