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GAVIN NEWSOM, Governor  
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May 2, 2023  
*Sent via email*

Ben Torres  
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City of Rancho Mirage  
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Section 24 Annexation (PROJECT)  
DRAFT ENVIRONMENTAL IMPACT STUDY (DEIS)  
SCH# 2023030502

Dear Mr. Torres:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Study (DEIS) from the City of Rancho Mirage (City) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA guidelines<sup>1</sup>.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may

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<sup>1</sup>CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** None indicated in the CEQA document

**Objective:** The Project proposes the development of a site that occupies approximately 257 acres of mostly vacant undeveloped land within the reservation of the Agua Caliente Band of Cahuilla Indians (Tribe) and within the City's Sphere of Influence. A General Plan/Zoning Map Amendment is proposed to amend the existing pre-zoning designations of the Project site, which consist of Medium Density Residential (R-M), High Density Residential (R-H), and Community Commercial (C-C). The entire Project area is proposed to have an underlying designation of Mixed Use (M-U), and the Section 24 Specific Plan will be adopted to establish seven (7) planning areas within the subject site. The Project site is also proposed to be annexed into the City of Rancho Mirage. The Project site has already been approved by the Tribe for the potential development of up to 3,138,600 square feet of commercial, retail, office, restaurant, hotel, and entertainment uses, as well as up to 1,406 multifamily residential units.

The Tribe prepared and approved the Section 24 Specific Plan (SCH No. 2014011035) to guide the development of 576 acres of Tribal Reservation Land bounded by Ramon Road to the north, Bob Hope Drive to the east, Dinah Shore Drive to the south, and Los Alamos Road to the west. The property the City is proposing to annex and amend the rezoning designation for is only the Tribal Planning Areas (1-7) identified in the Section 24 Specific Plan. Planning Area 8 for the Active Adult Community within the Section 24 Specific Plan was previously annexed into the City.

The Tribe prepared an Environmental Impact Statement (EIS) addressing the potential environmental effects of the Section 24 Specific Plan, and the EIS was approved by the Tribe on May 12, 2015. The EIS was prepared and adopted consistent with the substantive and procedural requirements of the California Environmental Quality Act (CEQA), as well as the Tribal Environmental Policy Act. The City of Rancho Mirage has reviewed the Section 24 EIS and has determined that the EIS meets the requirements of CEQA and was circulated for public review in conformance with Section 15087(a) of the CEQA Guidelines. In accordance with Sections 15221 and 15225 of the CEQA Guidelines, the City of Rancho Mirage intends to use the Section 24 EIS in the place of an Environmental Impact Report (EIR) for the Section 24 Specific Plan Tribal Planning

Areas, and the City's notice is being given in the same manner as a notice of public availability of a draft EIR under CEQA Guidelines Section 15087.

The Project's landscape treatment would incorporate a distinct theme. Rock gardens and water features may also be used. The Project would develop a system of pedestrian, Neighborhood Electric Vehicle (NEV), golf cart, and bicycle travel throughout the Project Site and into the surrounding community. Pedestrian circulation would be provided by 5- to 8-foot-wide sidewalks along internal and perimeter roadways. Within the Project site, Class I bikeways and golf cart paths (8 feet wide) are provided along Bob Hope Drive, Ramon Road, Dinah Shore Drive, and Los Alamos Road as off-street pathways that allow bicyclists, golf carts, and pedestrians to travel along the same route. Infrastructure improvements would be installed to support the Project development including water, sanitary sewer, drainage and flood retention systems, and utility improvements.

**Location:** The Project Area is located at the southwest corner of Ramon Road and Bob Hope Drive (Assessor's Parcel Numbers: 685-410-005, -006, -007, -012, and -013) on approximately 257 acres in Riverside County. Adjacent jurisdictions surrounding the Project Site include the City of Palm Desert to the southeast, Cathedral City to the west, and the City of Palm Springs to the northwest.

**Timeframe:** No timeframe has been established for the development of the Tribal Planning Areas (1-7) of the Section 24 Specific Plan, but the Project anticipates buildout by 2035. Page 2.0-2 of the DEIS indicates that "the Planning Areas have also been constructed to recognize the current ownership patterns, thus enabling the Project to be constructed in an incremental fashion while still achieving a unified development."

## **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 DEIS has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) on biological resources and whether those impacts are reduced to less than significant.

CDFW's comments and recommendations on the DEIS are explained in greater detail below and summarized here. CDFW is concerned that the DEIS does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the DEIS lacks sufficient information to facilitate a meaningful review by CDFW, including both a complete and accurate

assessment of biological resources on the Project site and a possibly outdated Project description. CDFW requests that additional information and analyses be added to a revised DEIS, along with avoidance, minimization, and mitigation measures that avoid or reduce impacts to less than significant.

### Project Description

Compliance with CEQA is predicated on a complete and accurate description of the proposed Project, including reasonably foreseeable future phases of the proposed Project. Without a complete and accurate Project description, the DEIS likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the Project description.

The DEIS is dated November 2014, and it is unclear if the Project design has changed since this date. If Project design plans for artificial nighttime lighting, landscaping, Project timeframe, or other design aspects have changed that may result in different and/or additional impacts to fish and wildlife resources, CDFW requests that the DEIS is revised to include up-to-date Project description. To conduct a meaningful review and provide biological expertise on how to protect fish and wildlife resources, CDFW requires an accurate Project description.

### 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 DEIS. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the DEIS may provide an incomplete analysis of Project-related environmental impacts.

The DEIS lacks a recent and complete assessment of biological resources within the Project site and surrounding area. A complete and accurate assessment of the environmental setting and Project-related impacts to biological resources is needed to both identify appropriate avoidance, minimization, and mitigation measures and demonstrate that these measures reduce Project impacts to less than significant.

### Mitigation Measures

CEQA requires that a DEIS include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the DEIS are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support City of Rancho Mirage in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for an assessment of biological resources, burrowing owl (*Athene*

*cunicularia*), artificial nighttime lighting, and Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) compliance, as well as revising the mitigation measure for nesting birds.

### **1) Assessment of Biological Resources**

Page 5.3-3 indicates that biological surveys were last conducted in February and March of 2014. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed. CDFW recommends that the DEIS is revised to include the findings of a complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Based on findings from a recent biological inventory, CDFW recommends that the DEIS is revised to include an analysis of direct, indirect, and cumulative impacts to biological resources and identification of appropriate avoidance, minimization, and mitigation measures. Recent and complete information on biological resources; analysis of a Project's direct, indirect, and cumulative impacts; and appropriate avoidance, minimization, and mitigation measures support the Lead Agency in demonstrating that Project impacts to biological resources are less than significant.

CDFW recommends that the City of Rancho Mirage include in a revised DEIS the following mitigation measure:

#### **Mitigation Measure BIO-[A]: Assessment of Biological Resources**

**Prior to Project construction activities for all phases of the Project, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological 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. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.**

## **2) *Burrowing Owl***

Burrowing owl (*Athene cunicularia*) 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, catch, 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.

Page 5.3-7 of the DEIS indicates that burrowing owls were observed within the Project Site boundaries during six separate days in 2014, one active burrow was found, and the entire Project Site is considered potential habitat for burrowing owl. Page 5.3-4 states that animal surveys were conducted simultaneously with plant surveys using east/west transects at 10-yard intervals.

CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. CDFW recommends the DEIS is revised to include summary reports from *recent* and *focused* surveys for burrowing owl, as described in the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012<sup>2</sup>), which includes survey methods and survey results among other items. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, 3503.5, and 3513. If focused surveys confirm occupied burrowing owl habitat in or adjacent to the Project area, CDFW recommends that the DEIS is revised to include an impact assessment per guidelines in the *Staff Report on Burrowing Owl Mitigation*. Impact assessments evaluate the extent to which burrowing owls and their habitat may be

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<sup>2</sup> California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

impacted, directly or indirectly, on and within a reasonable distance of the proposed Project. Burrowing owl surveys and an impact assessment will also inform appropriate avoidance, minimization, and mitigation measures for the Project and help demonstrate that impacts to burrowing owls are less than significant.

Importantly, because the Project's timeframe has not yet been established and may be constructed over multiple phases, and there may be a considerable lapse of time between phases when burrowing owls may reoccupy areas with suitable habitat, CDFW recommends that focused and pre-construction burrowing owl surveys are repeated prior to ground disturbance and vegetation removal activities for all phases of Project construction.

Although the DEIS includes Mitigation Measure 5.3-2 for burrowing owl, CDFW considers the measure to be inadequate in scope and timing to reduce impacts to less than significant. CDFW recommends that City of Rancho Mirage revise Mitigation Measure 5.3-2 in a revised DEIS as follows, with additions in **bold** and removals in ~~strikethrough~~:

#### **Mitigation Measure 5.3-2: Burrowing Owl Surveys**

**Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted for all Project phases in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). 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, monitoring, relocation, minimization, and/or mitigation 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 minimization and 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 for all Project phases and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities.** ~~To avoid impacts to burrowing owls during construction, the following actions, which are consistent with the Staff Report on Burrowing Owl Mitigation prepared by the California Department of Fish and Wildlife on March 7, 2012 and approved and accepted by the U.S. Fish and Wildlife Service, shall be taken: A preconstruction survey should take place not more than 30 days prior to any construction activities planned between February 15 and June 15, the breeding season for burrowing owls, project grading to determine the location of any active burrows on and within 550 yards of an approved project site. If no active burrows are found in the survey area, site disturbance may commence providing a biological monitor is onsite. A biological monitor, with the authority to halt or redirect grading, shall be present whenever grading or construction vehicles are present and operating on the project site. The function of the monitor is to protect burrowing owls that arrive on or near the project site after the clearance survey and during the construction period.~~

### **3) Nesting Birds**

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

Page 18 of the Project's General Biological Resources Assessment (BRA) includes a brief list of birds frequently detected during the surveys in 2014 and indicates that loggerhead shrike (*Lanius ludovicianus*) was observed. Besides information on



burrowing owls, the DEIS lacks additional information on nesting birds. Although the DEIS includes Mitigation Measure 5.3-3 specifically for loggerhead shrike, the DEIS does not include additional mitigation measures for other nesting birds.

Page 15 of the BRA indicates that the Project site is dominated by Sonoran creosote bush scrub plant community, including creosote bush (*Larrea tridentata*), Emory's dalea (*Dalea emoryi*), wingscale (*Atriplex Canescens*), and croton (*Croton californicus*). Based on review of Google Earth aerial and street imagery, the Project site supports areas with shrubs and trees that can serve as habitat for nesting birds. Appropriate avoidance and minimization measures are needed to demonstrate that impacts to nesting birds are less than significant. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided **any time birds are nesting on-site.**

Further, because the Project's timeframe has not yet been established and may be constructed over multiple phases, and there may be a considerable lapse of time between phases when shrubs and trees can reoccupy an area and create nesting habitat, CDFW recommends that nesting bird surveys are completed prior to all ground disturbance and vegetation removal activities for all phases of Project construction.

CDFW recommends the City of Rancho Mirage revise Mitigation Measure 5.3-3 in a revised DEIS to protect *all* nesting birds (not just loggerhead shrike) and birds of prey as follows, with additions in **bold** and removals in ~~strikethrough~~:

### **Mitigation Measure 5.3-3: Nesting Birds**

**Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities for all phases of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of**

~~**disturbance.** To avoid impacts to Loggerhead Shrikes during construction, breeding surveys shall be conducted simultaneously with burrowing owls surveys, 30 days prior to any construction activities planned between February 15 and June 15, which is the breeding season for both species. If a shrike nest is found, a buffer shall be established in which construction activities are prohibited until all young have fledged. The width of the buffer shall be determined by a qualified biologist.~~

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

Page 5.3-6 of the DEIS indicates that biological surveys in 2014 detected several Covered Species under the CVMSHCP, including Coachella Valley fringe-toed lizard (*Uma inornata*), flat-tailed horned lizard (*Phrynosoma mcallii*), burrowing owl (*Athene cunicularia*), Coachella Valley round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), and seedpods of Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*). Page 5.3-8 indicates that Coachella giant sand treader cricket (*Macrobaenetes valgum*), Coachella Valley Jerusalem cricket (*Stenopelmatus cahuiiaensis*), and Palms Springs pocket mouse (*Perognathus longimembris bangsi*) may also occur within the Project site but were not detected during the surveys. Page 5.3-8 further states “Under the THCP [Agua Caliente Tribal Habitat Conservation Plan] adverse impacts to these three species can be mitigated by the project proponent paying the Tribe the required mitigation fee.”

Because a portion of the Section 24 Specific Plan is proposed as part of the Project to be annexed to the City or Rancho Mirage, a Local Permittee under the CVMSHCP, CDFW recommends that the DEIS is revised to include a discussion of the Project’s compliance with the CVMSHCP. Compliance may include the obligation of the City of Rancho Mirage to impose a local development mitigation fee for this Project and comply with other terms and conditions of the CVMSHCP such as encouraging the opportunity to salvage sand-dependent Covered Species (Section 6.6.1 of the CVMSHCP), an obligation for Local Permittees both inside and outside Conservation Areas. CDFW recommends that the City of Rancho Mirage consult with the Coachella Valley Conservation Commission (the Implementing Entity of the CVMSHCP) on the City’s obligations under the CVMSHCP for this Project. CDFW provides the following recommendations below regarding the City of Rancho Mirage’s compliance with the CVMSHCP regarding local development mitigation fees and salvage of sand-dependent Covered Species.

#### Local Development Mitigation Fees

The DEIS lacks a discussion of the City of Rancho Mirage’s obligations as a Local Permittee under the CVMSHCP to impose a local development mitigation fee for this Project. Section 5.2.1.1 of the CVMSHCP states that “local jurisdictions will impose a mitigation fee on new Development within the Plan Area that impacts vacant land containing Habitat for Covered Species or any of the conserved natural communities in

the Plan through adoption, or amendment of existing fee ordinance. In addition to large vacant areas, this also applies to small vacant lots within urban areas that still contain natural open space.” Section 6.6.1 of the CVMSHCP further discusses the obligation of Local Permittees to impose local development mitigation fees, including “collecting all revenues generated within their respective jurisdictional boundaries for the Plan implementation and transferring those revenues to CVCC within thirty (30) days of collection.” Because the Project site contains habitat for Coachella Valley fringe-toed lizard, flat-tailed horned lizard, Coachella Valley milk vetch, and burrowing owl, which are Covered Species under the CVMSHCP, the Project is subject to the CVMSHCP Local Development Mitigation Fee.

To document the City of Rancho Mirage’s obligation as a Local Permittee under the CVMSHCP to impose a local development mitigation fee for this Project, CDFW recommends the City of Rancho Mirage add the following mitigation measure to a revised DEIS:

**Mitigation Measure BIO-[B]: 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 and transfer of revenues to the Coachella Valley Conservation Commission.**

Salvage of Sand-Dependent Covered Species

With regard to obligations of Local Permittees, Section 6.6.1 of the CVMSHCP indicates that “within and outside conservation areas, on parcels approved for development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species”. Biological surveys in 2014 detected within the Project site several Covered Species under the CVMSHCP that are sand-dependent, including Coachella Valley fringe-toed lizard, flat-tailed horned lizard, Coachella Valley round-tailed ground squirrel, and Coachella Valley milkvetch. Additional sand-dependent Covered Species may be identified in a subsequent assessment of biological resources recommended by CDFW (see “Assessment of Biological Resources” section above). CDFW recommends the City of Rancho Mirage include in a revised DEIS a plan for salvaging sand-dependent Covered Species. CDFW recommends the following mitigation measure be added to a revised DEIS:

**Mitigation Measure BIO-[C]: Salvage of Sand-Dependent Covered Species**

**Prior to construction and issuance of any grading permit, the City of Rancho Mirage shall prepare and submit to the California Department of Fish and**

**Wildlife and the U.S. Fish and Wildlife Service, for review and approval, a plan to salvage sand-dependent CVMSHCP Covered Species within the Project area. The plan shall be prepared by a qualified biologist experienced in surveying for and handling sand-dependent Covered Species. The plan shall include, but not be limited to, the species-specific salvage methods and timing for each sand-dependent Covered Species identified within the Project site and the location(s) where each species will be translocated. Only qualified biologist(s) with appropriate state and federal permits to handle special-status species shall carry out salvage activities.**

### ***5) Artificial Nighttime Lighting***

Pages 3.0-30 and 3.0-31 of the DEIS indicate that the Project will incorporate public street lighting, private street lighting, and landscape lighting, including signage lighting, accent-up lighting, and washing of walls to illuminate vines or espaliers. Page 5.1-10 of the DEIS states that all lighting would be hooded and directed downward to minimize light and direct glare impacts on neighboring properties and reduce impacts on dark skies. The DEIS appears to have conflicting information with regard to lighting and avoidance and minimization measures, as accent up-lighting and washing of walls to illuminate vines or espaliers are not directed downward and may not be hooded. Additionally, the DEIS is dated November 2014 and it is unclear if lighting plans have changed. CDFW recommends the DEIS is revised to include an accurate description of current lighting plans (including design specifications) and avoidance and minimization measures to support CDFW in conducting a meaningful review and providing appropriate biological expertise on the protection of fish and wildlife resources.

The DEIS also lacks an analysis of the direct, indirect, and cumulative impacts of artificial nighttime lighting expected to adversely affect biological resources surrounding the Project site as a result of construction and long-term operation of the Project. Because the Project is located near open-space areas to the north and east containing partially stabilized sand dunes that receive aeolian (wind-transported) sand and likely support sand-dependent Covered Species under the CVMSHCP, in addition to migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife, CDFW recommends that additional avoidance and minimization measures for lighting are implemented to reduce impacts to less than significant. Available research indicates that artificial nighttime lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and

seasonal cycles; the detection of resources and natural predators; and navigation<sup>3</sup>. Further, many of the effects of artificial nighttime lighting on population- or ecosystem-level processes are still poorly understood suggesting that a precautionary approach should be taken when determining appropriate avoidance and minimization measures concerning artificial nighttime lighting.

To reduce impacts of artificial nighttime lighting to less than significant, CDFW recommends that the City of Rancho Mirage include in a revised DEIS the following mitigation measure:

#### **Mitigation Measure BIO-[D]: Artificial Nighttime Lighting**

**During Project construction and operations over the lifetime of the Project, the City of Rancho Mirage shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that all lighting for Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare onto other properties 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.**

#### **6) Landscaping**

Page 2.0-18 of the DEIS indicates that the Project's landscaping plans include desert-friendly plants that includes ornamental varieties of trees, shrubs, groundcovers, and vines. Page 3.0-14 of the DEIS indicates that rock gardens and water features may also be used in key landscaping areas. To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally

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<sup>3</sup> Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. *The ecological impacts of nighttime light pollution: a mechanistic appraisal*. *Biological Reviews*, 88.4 (2013): 912-927.

native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>. CDFW also recommends that the DEIS include recommendations regarding landscaping from Section 4.0 of the CVMSHCP "Table 4-112: Coachella Valley Native Plants Recommended for Landscaping" (pp. 4-180 to 4-182; <https://cvmshcp.org/plan-documents/>).

## **ENVIRONMENTAL DATA**

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

## **ENVIRONMENTAL DOCUMENT FILING FEES**

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


## **CONCLUSIONS**

CDFW appreciates the opportunity to comment on the DEIS to assist the City of Rancho Mirage in identifying and mitigating Project impacts to biological resources. CDFW concludes that the DEIS does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the DEIS lacks sufficient information for a meaningful review of impacts to biological resources, including an adequate Project description and complete and accurate assessment of biological resources on the Project site. The CEQA Guidelines (§ 15088.5) indicate that recirculation is required when insufficient information in the DEIS precludes meaningful review. CDFW recommends that a revised DEIS with a current Project description, a recent and complete assessment of impacts to biological resources, and mitigation to avoid and reduce those impacts to less than significant be recirculated for public comment.

Ben Torres, Planning Manager  
City of Rancho Mirage  
May 2, 2023  
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CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Environmental Scientist, at [jacob.skaggs@wildlife.ca.gov](mailto:jacob.skaggs@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84F92FFEEFD24C8...

Kim Freeburn  
Environmental Program Manager

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

ec:

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**ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

Mitigation Measures	Timing and Methods	Responsible Parties
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<p><b>Mitigation Measure BIO-[A]: Assessment of Biological Resources</b></p> <p>Prior to Project construction activities for all phases of the Project, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological 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. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.</p>	<p><b>Timing:</b> Prior to Project construction activities for all phases of the Project</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City of Rancho Mirage</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>
<p><b>Mitigation Measure 5.3-2: Burrowing Owl Surveys</b></p> <p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted for all Project phases in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). 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, monitoring, relocation,</p>	<p><b>Timing:</b> Prior to the start of Project-related activities for all phases of the Project for focused surveys. No less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance for</p>	<p><b>Implementation:</b> Project Applicant</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>



<p>minimization, and/or mitigation 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 minimization and 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>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities for all Project phases and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation (2012 or most recent version)</i>. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction 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, minimization, and mitigation measures to be approved by CDFW prior to commencing Project activities. To avoid impacts to burrowing owls during construction, the following actions, which are consistent with the Staff Report on Burrowing Owl Mitigation prepared by the California Department of Fish and Wildlife on March 7, 2012 and approved and accepted by the U.S. Fish and Wildlife Service, shall be taken: A preconstruction survey should take place not more than 30 days prior to any construction activities planned between</p>	<p>preconstruction surveys.</p> <p><b>Methods:</b> See Mitigation Measure</p>	
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<p>February 15 and June 15, the breeding season for burrowing owls, project grading to determine the location of any active burrows on and within 550 yards of an approved project site. If no active burrows are found in the survey area, site disturbance may commence providing a biological monitor is onsite. A biological monitor, with the authority to halt or redirect grading, shall be present whenever grading or construction vehicles are present and operating on the project site. The function of the monitor is to protect burrowing owls that arrive on or near the project site after the clearance survey and during the construction period.</p>		
<p><b>Mitigation Measure 5.3-3: Nesting Birds</b></p> <p>Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities for all phases of the Project. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-construction nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on-site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance. To avoid impacts to Loggerhead Shrikes during construction, breeding surveys shall be conducted simultaneously with burrowing owls surveys, 30 days prior to any construction activities planned between February 15 and June 15, which is the</p>	<p><b>Timing:</b> No more than 3 days prior to vegetation removal or ground-disturbing activities for all phases of the Project</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> Project Applicant</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>

<p><del>breeding season for both species. If a shrike nest is found, a buffer shall be established in which construction activities are prohibited until all young have fledged. The width of the buffer shall be determined by a qualified biologist.</del></p>		
<p><b>Mitigation Measure BIO-[B]: CVMSHCP Compliance</b></p> <p><b>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 and transfer of revenues to the Coachella Valley Conservation Commission.</b></p>	<p><b>Timing:</b> Prior to construction and issuance of any grading permit</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City of Rancho Mirage</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>
<p><b>Mitigation Measure BIO-[C]: Salvage of Sand-Dependent Covered Species</b></p> <p><b>Prior to construction and issuance of any grading permit, the City of Rancho Mirage shall prepare and submit to the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service, for review and approval, a plan to salvage sand-dependent CVMSHCP Covered Species within the Project area. The plan shall be prepared by a qualified biologist experienced in surveying for and handling sand-dependent Covered Species. The plan shall include, but not be limited to, the species-specific salvage methods and timing for each sand-dependent Covered Species identified within the Project site and the location(s) where each species will be translocated. Only qualified biologist(s) with appropriate state and federal permits to handle special-status species shall carry out salvage activities.</b></p>	<p><b>Timing:</b> Prior to construction and issuance of any grading permit</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City of Rancho Mirage</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>
<p><b>Mitigation Measure BIO-[D]: Artificial Nighttime Lighting</b></p> <p><b>During Project construction and operations over the lifetime of the Project, the City of Rancho Mirage shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active.</b></p>	<p><b>Timing:</b> During Project construction and operations over the lifetime of the Project</p>	<p><b>Implementation:</b> Project Applicant and City of Rancho Mirage</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>

<p><b>The City shall ensure that all lighting for Project is fully shielded, cast downward, reduced in intensity to the greatest extent, and does not result in lighting trespass including glare onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <a href="http://darksky.org/">http://darksky.org/</a>). 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.</b></p>	<p><b>Methods:</b> See Mitigation Measure</p>	
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