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Governor’s Office of Planning & Research

January 22 2024

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

STATE CLEARINGHOUSE

**TENTATIVE TRACT MAP 38447 - 8-LOT SUBDIVISION (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH#: 2023120620**

Dear Pilar Lopez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Rancho Mirage (City), for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW’s lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Lucy Duran

Objective: The Project proposes Tentative Tract Map No. 38447 which would subdivide existing Accessor Parcel Number (APN) 685-100-012 into eight residential lots, four lettered lots, and a private street named Aura Circle. The residential lots would range in size from 18,000 square feet to 20,772 square feet. The proposed site is approximately 5.04 acres and has the underlying zoning designation of Very Low Density Residential (R-L-2). The Project would also connect to a new 8-inch sewer line, connect to an existing 7-inch water line, and create a retention basin.

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 Project would be located on the southwest corner of the intersection of Via Florencia and Via Josefina in the City of Rancho Mirage, County of Riverside, State of California (33.791639, -116.399612). The Project site corresponds to APN 685-100-012. The Project site consists of vacant land with a housing structure at the north end of the property and is surrounded by vacant land to the west and north and housing developments to the east and south. The Project is located within the boundaries of the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

Timeframe: The Project is anticipated to commence in January 2024 and would take approximately twelve months to complete.

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 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.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Timing of Construction and Construction Activities

Initial Study/Mitigated Negative Declaration (IS/MND) document, Pages #5-7

Issue: The MND does not analyze impacts to biological resources associated with the timing of Project construction and potential construction activities.

Specific impact: The MND states (Appendix B, p. 11), "future development of the site will impact the general biological resources present on site, because most if not all of the vegetation will be removed during future construction activities. The site is expected to support very few wildlife species which will be impacted by development activities. Those species with limited mobility (i.e., small mammals and reptiles) will experience increases in mortality during the construction phase." No future development plans were proposed in the MND. With the current information and lack of future development plans, CDFW is unable to provide a meaningful review of Project impacts to biological resources.

Moreover, the MND (p. 5) states the Project would connect to a new 8-inch sewer line, connect an existing 7-inch water line, and would construct a 9,829 square foot retention basin (Table 1, p. 6). The MND should acknowledge that future Project activities including, but not limited to, utility extensions and stormwater improvements have the potential to impact biological resources and have not been adequately described in the MND. A complete description of these Project activities and analysis of impacts to biological resources resulting from the Project activities is lacking in the MND.

Additionally, the MND should acknowledge that if the Project site is left vacant or left graded and inactive in the interim period between construction phases, environmental conditions may change. Grading and leaving a site inactive may result in the area becoming occupied by wildlife that utilize disturbed areas (e.g., ground squirrels and burrowing owls).

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related

impacts to biological resources. CDFW has identified gaps in information related to the project description.

CDFW Recommendations: A revised MND should analyze impacts to biological resources resulting from an extended timeline for Project activities, pauses in construction, and impacts due to specific construction activities such as utility extensions and stormwater improvements. The revised MND should acknowledge that wildlife may move into disturbed or graded sites when construction is paused. The revised MND should also acknowledge that preconstruction surveys for biological resources will need to be repeated prior to Project activities and after pauses in construction to assess the presence of biological resources and to avoid or reduce impacts to less than significant.

COMMENT #2: Landscaping

IS/MND document, Page #45

Issue: The MND lacks a description of the type of landscaping that will be installed and maintained over the life of the Project.

Specific impact: The MND states (p. 45) “following development, the Project site would be paved and landscaped”; however, no further details are provided.

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

CDFW Recommendation: 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 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 MND include recommendations regarding landscaping from Section 4.0 of the CVMSHCP “Table 4-112: Coachella Valley Native Plants Recommended for Landscaping” (pp. 4-180 to 4-182; <https://cvmshcp.org/plan-documents/>).

II. Environmental Setting and Related Impact Shortcoming

COMMENT #3: Assessment of Biological Resources

IS/MND document, Section IV, Pages #30-35, Appendix B

Issue: The MND does not adequately identify the Project’s significant, or potentially significant, impacts to biological resources.

Specific impact: The MND bases its analysis of impacts to biological resources on a general biological survey conducted by RCA Associates Inc. on November 15, 2022 (Appendix B). CDFW is concerned about the potential for special-status species to occur on or near the Project site. No focused or protocol-level surveys were performed for the detection of special-status species. In addition, the timing of the general field assessment in November was not sufficient to detect all special-status species. The

Project is surrounded by vacant land and there is potential for special-status species to be impacted either directly or indirectly by Project activities. The California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of ESA-listed, CESA-listed, or other special-status species have been reported near the Project area including but not limited to species listed in the “Special-Status Plants” section below; species listed in the “Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)” section below; and Palm Springs round-tailed ground squirrel (*Xerospermophilus tereticaudus chlorus*), Casey’s June beetle (*Dinacoma casey*), and coastal California gnatcatcher (*Poliioptila californica californica*).

Recent surveys during the appropriate times of the year are needed to identify potential impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and determine whether impacts to biological resources have been mitigated to a level that is less than significant. 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.

Evidence impact would be significant: 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 with respect to biological resources has not been adequately analyzed in the MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the MND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant. 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.

Recommended Potentially Feasible Mitigation Measure:

To establish the existing environmental setting with respect to biological resources, CDFW recommends that a revised MND include the results of recent biological surveys as described in the following mitigation measure, as well as any necessary mitigation measures:

MM BIO-[A]: Assessment of Biological Resources

Prior to Project construction activities, 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.

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

COMMENT #4: Special-Status Plants

IS/MND document, Section IV, Pages #33 and 34, BIO-2

Issue: CDFW is concerned that the field assessment conducted for the MND was not sufficient in timing and scope to detect special-status plant species that may occur on the Project site.

Specific impact: The MND states (Appendix B, Table 4-1) “sixteen special-status plant species have been documented within the Cathedral City quad of the property,” and (Appendix B, p. 11) “most if not all of the vegetation will be removed during future construction activities.” CNDDDB/BIOS indicates that the following special-status plants have historically occurred on or near the Project site: chaparral sand-verbena (*Abronia villosa* var. *aurita*), flat-seeded spurge (*Phrynosoma mcallii*), Horn’s milk-vetch (*Astragalus hornii* var. *hornii*), slender cottonheads (*Nemacaulis denudata* var. *gracilis*), Arizona spurge (*Euphorbia platysperma*), desert spike-moss (*Selaginella eremophila*), and purple stemodia (*Stemodia durantifolia*). CDFW is concerned that the habitat assessment was not conducted at the appropriate time(s) of year to detect all special-status plants on the Project site and did not follow the standard protocol to detect special-status plants. Floristic assessments typically involve multiple visits to the project site at various times of year to detect plants in various blooming seasons. If the presence of special-status plant species is not determined through floristic based surveys, unauthorized take or disturbance of special-status plant species could occur. CDFW recommends a thorough, floristic-based assessment of special-status plants at the appropriate time of year be conducted, usually involving multiple visits to the Project area, as described below.

Evidence impact would be significant: The California Rare Plant Rank 1B indicates plants that are rare, threatened, or endangered in California and elsewhere, and California Rare Plant Rank 2B indicates plants that are rare, threatened, or endangered in California but more common elsewhere. Impacts to these species must be analyzed during preparation of environmental documents relating to CEQA because they meet the definition of rare or endangered under CEQA Guidelines §15125 (c) and/or §15380.

Recommended Potentially Feasible Mitigation Measure:

CDFW appreciates the inclusion of MM BIO-2; however, the measure is insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends that prior to commencing Project activities for all phases of Project construction, a thorough, recent, floristic-based assessment of special-status plants be completed at the appropriate time(s) of year. 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. For unavoidable impacts to special status species, on-site habitat restoration and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated and discussed in detail in a revised MND. CDFW recommends the City include a revised Mitigation Measure BIO-2 in a revised MND as follows, with additions in **bold** and removals in ~~strikethrough~~:

MM BIO-2: Special-Status Plants

~~A focused plant survey should be considered for all special status plant species that have the potential to occur on the site to be performed during the blooming season (April – June) to determine the potential environmental effects of the proposed projects on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife. **Prior to Project**~~

construction activities, a thorough, recent, 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 (see <https://www.wildlife.ca.gov/Conservation/Plants>) shall be performed by a qualified biologist. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should other special-status plants or natural communities be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.

COMMENT #5: Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)

IS/MND document, Page #34

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

Specific impact: The Project does not occur within or share a common boundary with a Conservation Area of the CVMSHCP; however, the Project is within the boundary of the Plan area. CNDDDB/BIOS indicates that the following species that are covered under the CVMSHCP have the potential to occur on the Project site: Coachella Valley milkvetch (*Astragalus lentiginosus* var. *coachellae*), Coachella Valley fringe-toed lizard (*Uma inornata*), flat-tailed horned lizard (*Phrynosoma mcallii*), desert tortoise (*Gopherus agassizii*), burrowing owl (*Athene cunicularia*), Le Conte's thrasher (*Toxostoma lecontei*), yellow warbler (*Setophaga petechia*), western yellow bat (*Lasiurus xanthinus*), Coachella giant sand treader cricket (*Macrobaenetes valgum*), and Coachella Valley Jerusalem cricket (*Stenopelmatus cahuilensis*). 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.

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". The MND states (p. 44) that the surface substrate on the Project site is composed mainly of wind-blown, recent deposited sediments that are typically loose. This type of substrate has the potential to be occupied by several Covered Species under the CVMSHCP that are sand-dependent, including Coachella Valley fringe-toed lizard, flat-tailed horned lizard, and Coachella Valley milkvetch. An assessment of biological resources is recommended by CDFW to determine whether these or other sand-dependent species are present on the Project site (see "Assessment of Biological Resources" and "Special-Status Plants" sections above).

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

Recommended Potentially Feasible Mitigation Measures:

To comply with Local Permittee obligations under the CVMSHCP, CDFW recommends the following mitigation measure be added to a revised MND:

MM 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.

In addition, if the results of the assessment of biological resources (see “Assessment of Biological Resources” and “Special-Status Plants” sections above) indicate the presence of sand-dependent Covered Species, CDFW recommends that the City of Rancho Mirage coordinate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species. CDFW recommends the following mitigation measure be included in a revised MND:

MM 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.

III. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #6: Burrowing Owl

IS/MND document, Section IV, Pages #30-35, BIO-1

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are mitigated to a level less than significant.

Specific impact: The MND (p. 32) states “the site is located within documented burrowing owl habitat,” and burrow-creating mammals including antelope ground squirrel, California ground squirrel, and Merriam’s kangaroo rat are expected to occur on-site. Suitable burrowing owl habitat has been confirmed on-site including open and disturbed areas, and potential burrows that would likely support the species at any time during construction. Additionally, CNDDDB/BIOS report occurrences of burrowing owl within 2.75 miles of the Project site.

CDFW notes that in California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs (Haug et al. 1993), and that burrowing owls may occur in ruderal grassy fields, vacant lots, and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in proximity (Gervais et al. 2003). In addition, burrowing owls frequently move into disturbed areas prior to and during construction since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs or destroying nesting, foraging, or over-wintering

habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to harass owls at occupied burrows, and other activities.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. 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.” Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

Recommended Potentially Feasible Mitigation Measure:

CDFW appreciates the inclusion of MM BIO-1; however, the measure is insufficient in scope and timing to reduce impacts to a level less than significant. Additionally, CDFW recommends including a separate measure for burrowing owl in a revised MND with specific avoidance and minimization measures to ensure that impacts to burrowing owls do not occur. CDFW recommends that prior to commencing Project activities for all phases of Project construction, focused surveys for burrowing owl be conducted for the entirety of the Project site by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). CDFW recommends the City include Mitigation Measure BIO-[D] in a revised MND as follows:

MM BIO-[D]: Focused and Pre-Construction Surveys for Burrowing Owl

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version) prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, 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. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to

ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.

COMMENT #7: Nesting Birds

IS/MND document, Section IV, Pages #30-35, BIO-1

Issue: CDFW is concerned that the MND does not identify Project impacts to nesting birds or ensure that impacts are mitigated to a level less than significant.

Specific impact: The MND (p. 31) indicates that the site supports wildlife, “many of them being birds.” CDFW is concerned about the impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and construction. Conducting work outside the peak breeding season is an important avoidance and minimization measure. CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. 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. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

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

Recommended Potentially Feasible Mitigation Measure:

CDFW appreciates the inclusion of MM BIO-1; however, the measure is insufficient in scope and timing to reduce impacts to a level less than significant. Additionally, CDFW recommends including a separate measure for nesting birds in a revised MND with specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting on-site**. Preconstruction nesting bird surveys

shall be performed within 3 days prior to Project activities to determine the presence and location of nesting birds. CDFW recommends the City include Mitigation Measure BIO-[E] in a revised MND as follows:

MM BIO-[E]: Pre-Construction Nesting Bird Survey

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. 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. Construction activities may not occur inside the established buffers, which shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

COMMENT #8: Construction Noise

IS/MND document, Section XIII, Page #62

Issue: The MND does not include an assessment of impacts to biological resources resulting from construction noise or mitigation measures to avoid or reduce impacts to a level less than significant.

Specific impact: The MND (p. 62) states the Project would result in a temporary noise increase and ground-borne vibration levels in the area from construction activities but includes no noise impact assessment or an analysis of the impacts of construction noise on biological resources. Based on the nature of the proposed construction activities (i.e., demolition, trenching, excavating, grading, compaction), noise levels would be expected to exceed exposure levels that may adversely affect wildlife species at 55 to 60 dBA.

Evidence impact would be significant: Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory 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).

Recommended Potentially Feasible Mitigation Measure:

Because of the potential for construction noise to negatively impact wildlife, CDFW recommends a revised MND include a noise impact assessment and an analysis of

impacts to biological resources accompanied by specific avoidance and minimization measures to ensure that impacts to wildlife are avoided or reduced to less than significant. CDFW recommends adding the following mitigation measure to a revised MND:

MM BIO-[F]: Construction Noise Impacts to Biological Resources

During all Project construction, the City 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 the 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.

COMMENT #9: Artificial Nighttime Light

IS/MND document, Section I, Page #20

Issue: The MND does not analyze impacts to biological resources from artificial nighttime lighting and includes no mitigation measures to avoid or reduce impacts to biological resources to a level less than significant.

Specific impact: The MND (p. 20) states that lighting will be designed to prevent emissions of glare or light at night and conditioned to be Dark Sky compliant; all of which are important to minimize impacts. However, no further details are provided, impacts to biological resources resulting from the use of artificial nighttime lighting during construction and operation of the Project are not analyzed, and no mitigation measures are proposed. Designs for lighting to be used during operation of the Project should be included in a revised MND, along with details of artificial nighttime lighting to be used during construction. The direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures to reduce impacts to less than significant should be included in a revised MND.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation (Gatson et al. 2013). Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Recommended Potentially Feasible Mitigation Measure:

Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends a revised MND include details of the use of artificial nighttime lighting proposed for construction and operation of the Project and an analysis of impacts to biological resources, as well as specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant. CDFW recommends the City include the following mitigation measure in a revised MND:

MM BIO-[G]: Artificial Nighttime Light

During Project construction and operation, the City shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The City shall ensure use 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.

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 the Project's significant, or potentially significant impacts on biological resources. The CEQA Guidelines indicate that recirculation is required when insufficient information in the MND precludes a meaningful review (§ 15088.5) or when a new significant effect is identified, and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that a revised MND, including a complete Project description and a description of the existing environmental setting, be recirculated for public comment. CDFW also recommends that the revised MND include an analysis of impacts to biological resources from construction noise and artificial nighttime lighting, as well as mitigation measures described in this letter for assessment of biological resources, special-status plants, CVMSHCP compliance, salvage of sand-dependent covered species, burrowing owl, nesting birds, construction noise, and artificial nighttime light.

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: Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW
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State.clearinghouse@opr.ca.gov

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Parties
MM BIO-[A]: Assessment of Biological Resources Prior to Project construction activities, 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	Prior to Project construction activities.	City of Rancho Mirage

<p>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>MM BIO-2: Special-Status Plants Prior to Project construction activities, a thorough, recent, 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 (see https://www.wildlife.ca.gov/Conservation/Plants) shall be performed by a qualified biologist. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should other special-status plants or natural communities be present in the Project area, on-site or off-site habitat restoration (whichever is applicable) and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated.</p>	<p>Prior to Project construction activities.</p>	<p>City of Rancho Mirage</p>
<p>MM 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.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>City of Rancho Mirage</p>
<p>MM 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.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>City of Rancho Mirage</p>
<p>MM BIO-[D]: Focused and Pre-Construction Surveys for Burrowing Owl</p>	<p>Focused surveys: Prior to the start of</p>	<p>City of Rancho Mirage</p>

<p>Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version) prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, 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. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS 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 and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). 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 prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>	<p>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>MM BIO-[E]: Pre-Construction Nesting Bird Survey 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. 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. Construction activities may not occur inside the established buffers, which 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</p>	<p>No more than three (3) days prior to vegetation clearing or ground-disturbing activities.</p>	<p>City of Rancho Mirage</p>

<p>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.</p>		
<p>MM BIO-[F]: Construction Noise Impacts to Biological Resources During all Project construction, the City 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 the 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.</p>	<p>During Project activities.</p>	<p>City of Rancho Mirage</p>
<p>MM BIO-[G]: Artificial Nighttime Light During Project construction and operation, the City shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. The City shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City shall ensure use 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 activities and operation.</p>	<p>City of Rancho Mirage</p>