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

April 8, 2024
Sent via email

Ben Torres
Planning Manager
City of Rancho Mirage
69-825 Highway 111
Rancho Mirage, CA 92270

Ritz-Carlton Rancho Mirage Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2024030267

Dear Ben Torres:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Rancho Mirage (City) for the Project pursuant to 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.

[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.

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: Kam Sang Company, Inc.

Objective: The proposed Project is to construct residential units within the Ritz-Carlton Residences section of the Project site (encompassing approximately 200,474 square feet), to construct 23,840 square feet of venue space, 5,510 square feet of amenity space, and 6,273 square feet of commercial space within the Sky Mesa Recreational Area portion of the Project site for a total project size of approximately 236,750 square feet. The residential suites, hotel villas, and sky mesa uses would include outdoor lighting. A desert landscape design is proposed throughout the Project site including water cascades, multiple pools, rock escarpments, and fountains. Landscaping would be located throughout the Project site and between proposed buildings with pedestrian access provided by the on-site pedestrian network.

Location: The proposed Project is located at 68900 Frank Sinatra Drive, approximately 0.85 miles southwest of the intersection with State Route 111 in the City of Rancho Mirage, Riverside County (Assessor's Parcel Numbers 689-020-012, 689-020-014, 689-330-031, 689-330-032, 689-330-034, and 689,331-018). The majority of the 4.5-acre project site is currently vacant and lies east of the existing Ritz-Carlton Rancho Mirage Hotel. The project site is located in Section 3, Township 5 South, and Range 5 East of the San Bernardino Baseline and Meridian, U.S. Geological Survey Cathedral City 7.5-minute quadrangle. The Project site is located within the Coachella Valley Multiple Species Habitat Conservation Plan area, outside of a Conservation Area, and approximately 350 feet from the boundary of the Santa Rosa and San Jacinto Mountains Conservation Area.

Timeframe: The MND does not indicate a timeline for the start of Project construction.

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) on biological resources and whether those impacts are reduced to less than significant.

CDFW's comments and recommendations on the MND are explained in greater detail below and summarized here. CDFW is concerned that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information to facilitate a meaningful review by CDFW, including a complete and accurate assessment of biological resources on the Project site and an incomplete Project description. CDFW requests that additional information and analyses be added to a revised MND, 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. 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.

The MND lacks an adequate discussion of plans for artificial nighttime lighting. CDFW requests that the MND is revised to include design plans for artificial nighttime lighting and lighting specifications. Artificial nighttime lighting can negatively impact biological resources in a variety of ways as discussed in the Artificial Nighttime Lighting section below. The MND also lacks an adequate discussion of perimeter fencing (or a functionally equivalent structure) that may serve to prohibit the entry of Peninsular bighorn sheep (*Ovis canadensis nelsoni*) and avoid take of this California fully protected species, as discussed in the Peninsular Bighorn Sheep section. The MND also lacks details on the landscape plants that will be used, specifically plants known to be toxic to Peninsular bighorn sheep.

To conduct a meaningful review and provide biological expertise on how to protect biological resources, CDFW requires a complete and 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 MND. CDFW is concerned that without a complete and

accurate description of the existing environmental setting, the MND may provide an incomplete analysis of Project-related environmental impacts.

The MND lacks a complete assessment of biological resources within the Project site and surrounding area specifically as it relates to burrowing owl (*Athene cunicularia*). A complete and accurate assessment of the environmental setting and Project-related impacts to burrowing owl 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 an MND include mitigation measures to avoid or reduce significant impacts. CDFW is concerned that the mitigation measures proposed in the MND are not adequate to avoid or reduce impacts to biological resources to below a level of significance. To support the City in ensuring that Project impacts to biological resources are reduced to less than significant, CDFW recommends adding mitigation measures for artificial nighttime lighting and Peninsular bighorn sheep, as well as revising the mitigation measures for nesting birds and burrowing owl.

1) 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 16 of the MND indicates that the Project "construction could result in direct and indirect impacts to nesting birds, including the loss of nests, eggs, and fledglings if ground-disturbing activities occur during the nesting season." The MND includes Mitigation Measures BIO-3 for nesting birds, which indicates that "if ground-disturbing and/or vegetation clearance activities are scheduled to occur during the avian nesting season (typically February 15 through August 31), a qualified biologist shall conduct a preconstruction nesting bird survey within the project impact footprint and a 500-foot buffer". CDFW considers the Mitigation Measure BIO-3 to be insufficient in scope and timing to reduce impacts to nesting birds to a level less than significant. CDFW is

concerned about impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and construction. Conducting work outside the peak nesting 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[2]). 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.

Although the MND includes Mitigation Measure BIO-3 for nesting birds, CDFW considers the measure insufficient to scope and timing to reduce impacts to a level less than significant. CDFW recommends that the City revise Mitigation Measure BIO-3 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-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. 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

[2] Socolar JB, Epanchin PN, Beissinger SR and Tingley MW (2017). Phenological shifts conserve thermal niches. Proceedings of the National Academy of Sciences 114(49): 12976-12981.

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 maintain compliance with the Migratory Bird Treaty Act and California Fish and Game Code, if ground-disturbing and/or vegetation clearance activities are scheduled to occur during the avian nesting season (typically February 15 through August 31), a qualified biologist shall conduct a preconstruction nesting bird survey within the project impact footprint and a 500-foot buffer where legal access is granted around the disturbance footprint. Surveys shall be conducted within 3 days prior to initiation of ground-disturbing activities. If an active nest is detected during the nesting bird survey, avoidance buffers shall be implemented as determined by a qualified biologist (typically 300 feet for passerines and 500 feet for raptors and special-status species). The buffer shall be of a distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. All nests shall be monitored as determined by the qualified biologist until nestlings have fledged and dispersed or it is confirmed that the nest has been unsuccessful or abandoned. The qualified biologist shall halt all construction activities within proximity to an active nest if it is determined that the activities are harassing the nest and may result in nest abandonment or take. The qualified biologist shall also have the authority to require implementation of avoidance measures related to noise, vibration, or light pollution if indirect impacts are resulting in harassment of the nest.~~

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-3 and MM BIO-4 as well as CDFW-recommended MM BIO-[A] and MM BIO-[B].

2) Burrowing Owl

Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

Page 14 of the MND indicates that burrowing owl have a “low potential to occur within the flatter portions of the Project site.” CDFW notes that in California, preferred habitat

for burrowing owl is generally typified by short, sparse vegetation with few shrubs,[3] 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 proximity.[4] In addition, burrowing owls frequently move into disturbed areas prior to and during construction activities since they are adapted to highly modified habitats[5,6]. Based on review of historical aerial imagery, the Project site contains sparce vegetation cover and is adjacent to open-space areas that would provide foraging habitat for burrowing owl. The Project site contains suitable habitat for burrowing owl.

Page 9 of the Project's Biological Resources Assessment dated February 21, 2022 (Biological Assessment), indicates that "no focused special-status wildlife surveys were conducted." Given the MND's lack of findings from a recent habitat assessment and focused surveys for burrowing owl following the guidelines in the *Staff Report on Burrowing Owl Mitigation*[7], the number of suitable and occupied burrows within the Project site and surrounding areas is unknown. Because suitable habitat for burrowing owls exists within the Project site, CDFW recommends the MND is revised to include the findings of focused surveys for burrowing owl following guidelines outlined in the *Staff Report on Burrowing Owl Mitigation*. Focused surveys for burrowing owl 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 MND 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 impacted, directly or indirectly, on and within a reasonable distance of the proposed Project. Focused 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.

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[3] Haug, E. A., B. A. Millsap, and M. S. Martell. 1993. Burrowing owl (*Speotyto cunicularia*), in A. Poole and F. Gill, editors, The Birds of North America, The Academy of Natural Sciences, Philadelphia, Pennsylvania, and The American Ornithologists' Union, Washington, D.C., USA.

[4] Gervais, J. A., D. K. Rosenberg, R. G. Anthony. 2003. Space use and pesticide exposure risk of male burrowing owls in an agricultural landscape. Journal of Wildlife Management 67: 155-164.

[5] Chipman, E. D., N. E. McIntyre, R. E. Strauss, M. C. Wallace, J. D. Ray, and C. W. Boal. 2008. Effects of human land use on western burrowing owl foraging and activity budgets. Journal of Raptor Research 42(2): 87-98.

[6] Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. Condor 73:162–176.

[7] California Department of Fish and Game (CDFG). 2012. Staff report of burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: http://www.dfq.ca.qov/wildlife/nonqame/survevmonitor.html

Although the MND includes Mitigation Measure BIO-4 for burrowing owl, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends that the City revise Mitigation Measure BIO-4 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-4: Burrowing Owl Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* 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, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe 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 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. ~~Pre-construction surveys for burrowing owls shall be completed within areas of suitable habitat (i.e., flatter portions of the site) in accordance with the Staff Report on Burrowing Owl Mitigation (CDFG 2012), with the first survey no less than 14 days prior to initiation of project-related activities, and the second within 24 hours of project-related activities. If~~

~~an active burrowing owl burrow is detected within 500 feet of the impact footprint, avoidance and minimization measures shall be implemented in accordance with the Staff Report on Burrowing Owl Mitigation guidelines or agreed upon by the California Department of Fish and Wildlife, including implementation of a non-disturbance buffer and monitoring of the nest to ensure activities are not adversely affecting the nest. If the project will occur within this zone, then work must occur outside the nesting season, or until it can be shown that the birds have finished nesting, at which point passive relocation may occur.~~

3) Artificial Nighttime Lighting

The Proposed project will result in new sources of artificial nighttime lighting. Page 55 of the MND indicates that the "residential suites, hotel villas, and sky mesa uses would include outdoor lighting. While this is a new source of light, existing hotel and the surrounding Mirada residential development already contains night-lighting. All lighting would comply with City of Rancho Mirage Municipal Code Section 17.18.050 (City of Rancho Mirage 2002) for shielding to control glare and prevent light spillover onto adjacent areas." Mitigation Measure BIO-2 indicates the Project will comply with CVMSHCP Land-Use Adjacency Guidelines for Lighting. The MND lacks any additional details on the Project's lighting plans and lighting specifications or additional avoidance and minimization measures associated with artificial nighttime lighting. The Project is located adjacent to open-space areas to the south and north of the Project site—areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, bats, other nocturnal and crepuscular wildlife.

The Project's proposed artificial nighttime lighting has the potential to significantly and adversely affect wildlife in the open-space areas adjacent to the Project site. 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[8]. Many species use photoperiod cues for communication (e.g., bird song[9]), determining when to begin foraging[10], behavioral thermoregulation[11], and migration[12]. Phototaxis, a phenomenon

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[8] Gatson, K. J., Bennie, J., Davies, T., Hopkins, J. 2013. The ecological impacts of nighttime light pollution: a mechanistic appraisal. Biological Reviews, 88.4: 912-927.
[9] Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139.
[10] Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. Current Biology 19:1123–1127.
[11] Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. Ecology 58:98–108.
[12] Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. Frontiers in Ecology and the Environment 2:191–198.

that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it[8].

CDFW recommends the MND is revised to include an analysis of the direct, indirect, and cumulative impacts of artificial nighttime lighting expected to adversely affect biological resources within open-space areas adjacent to the Project site. CDFW also recommends the MND is revised to include lightning design plans and lighting specifications to allow CDFW to conduct a meaningful review and provide appropriate biological expertise. The MND includes Mitigation Measure BIO-2, indicating that the Project will comply with CVMSHCP Land-Use Adjacency Guidelines for Lighting, though the MND lacks details on how the Project will comply with these guidelines related to lighting. To support the City in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends that the City add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[A]: Artificial Nighttime Lighting

Throughout construction and the lifetime operations of the Project, the City of Rancho Mirage and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City of Rancho Mirage and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City of Rancho Mirage and Project proponent 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.

4) Peninsular Bighorn Sheep

The Project site is located approximately 350 feet from the Santa Rosa and San Jacinto Mountains Conservation Area and Essential Habitat for Peninsular bighorn sheep. Peninsular bighorn sheep is a Covered Species under the CVMSHCP and a California fully protected species per Fish and Game Code Section 4700. Section 13.2 of the Implementing Agreement for the CVMSHCP obligates cities to ensure implementation consistent with the Species Conservation Goals and Objectives in Section 9 of the CVMSHCP, among other obligations. Section 9.8.4.4 of the CVMSHCP indicates that "Bighorn sheep are a California Fully Protected Species. All Covered Activities *of the Plan* must avoid actions that would result in violation of Section 4700 of the Fish and Game Code that addresses Fully Protected Species." The MND lacks discussion and

mitigation measures on how the City and Project will avoid take of Peninsular bighorn sheep.

In the Peninsular Ranges, a significant number of Peninsular bighorn sheep mortalities have been both directly and indirectly attributed to urbanization, including, but not limited to, mortalities associated with the consumption of toxic plants, the drowning in swimming pools, canals, and other water features, collisions with automobiles, and facilitation of disease and parasite transmission.[13] Plants known to be toxic to Peninsular bighorn sheep include, but are not limited to, oleander (*Nerium oleander*), laurel cherry (*Prunus Sp.*) and nightshade (species in the Solanaceae family)[14], plants that should not be used within or near habitat occupied by Peninsular bighorn sheep. Page 114 of the MND indicates that "desert landscape design is proposed throughout the project site including water cascades, multiple pools, rock escarpments, and fountains. Landscaping would be located throughout the project site and between proposed buildings with pedestrian access provided by the on-site pedestrian network." The Project's proposed water and landscape features have the potential to result in take of Peninsular bighorn sheep. The MND lacks a discussion of the plant species that will be used in landscaping and if plants toxic to Peninsular bighorn sheep will be used. Further, the MND does not indicate if the Project will include a fence or other barrier around the perimeter of the development that prohibits the entry of Peninsular bighorn sheep and their exposure to the Project's water and landscape features. Without additional details on these aspects of Project design, CDFW is unable to conduct a meaningful review and provide appropriate biological expertise on the topic of the City and Project avoiding take of Peninsular bighorn sheep. CDFW recommends the MND is revised to include discussion proposed perimeter fencing and the plants that will be used and avoided in landscaping.

To support the City and Project in avoiding take of Peninsular bighorn sheep, CDFW recommends the Project incorporates plans for the construction of a fence, wall, or similar structure surrounding the entire Project area that prohibits the entry of Peninsular bighorn sheep and their access to attractive nuisances including water features and landscaping vegetation. CDFW recommends the City revise the MND to include the following measure:

Mitigation Measure BIO-[B]: Peninsular Bighorn Sheep Barrier

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[13] DeForge, J. R. and S. D. Ostermann. 1 998b. The effects of urbanization on a population of desert bighorn sheep. Abstract for the 5~ Annual Conference of Wildlife Society, Buffalo, New York.

[14] U.S. Fish and Wildlife Service. 2000. Recovery plan for bighorn sheep in the Peninsular Ranges, California. U.S. Fish and Wildlife Service, Portland, OR. xv+251 pp.

Prior to the installation of water features and landscaping, the Project shall construct a fence, or functionally equivalent structure, surrounding the entire Project area that prohibits the entry of Peninsular bighorn sheep. The fence shall be a minimum of 8 feet high, or functionally equivalent, and shall not contain gaps in which bighorn sheep can be entangled. Gaps shall be 4.3 inches or less. The Project shall maintain a fence, or functionally equivalent structure, as described above, throughout the lifetime of the Project.

5) Landscaping

Page 115 of the MND indicates that the Project's "[l]andscaping would be located throughout the project site and between proposed buildings with pedestrian access provided by the on-site pedestrian network. The proposed plant palette would comprise of native, drought-tolerant plantings, consistent with the existing hotel landscaping and surrounding areas". No other details are provided in the MND on the Project's proposed landscaping plans. 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/cities and resource conservation cities 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/).

ENVIRONMENTAL DATA

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

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts to biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts to biological resources. CDFW also concludes that the MND lacks sufficient information for a meaningful review of impacts to biological resources, including an assessment of impacts to Peninsular bighorn sheep and Project description. 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 assessment of biological resources (burrowing owl), impacts to Peninsular bighorn sheep, and Project description, be recirculated for public comment. CDFW also recommends that revised and additional mitigation measures and analysis as described in this letter be added to a revised MND.

CDFW personnel are available for consultation regarding biological resources and strategies to avoid and minimize impacts. Questions regarding this letter or further coordination should be directed to Jacob Skaggs, Senior Environmental Scientist Specialist, at jacob.skaggs@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Kim Freeburn
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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
Mitigation Measure BIO-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. 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.** ~~To~~	**Timing**: No more than 3 days prior to vegetation removal or ground-disturbing activities. **Methods:** See Mitigation Measure	**Implementation**: City of Rancho Mirage and Project proponent **Monitoring and Reporting**: City of Rancho Mirage
Mitigation Measure BIO-4: Burrowing Owl Surveys **Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist according to the *Staff Report on Burrowing Owl Mitigation* 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**	**Timing: Focused surveys:** Prior to vegetation removal or ground-disturbing activities. **Pre-construction surveys:** No less than 14 days prior to start of Project-related activities and within 24	**Implementation**: City of Rancho Mirage and Project proponent **Monitoring and Reporting**: City of Rancho Mirage

Burrowing Owl Plan shall describe proposed avoidance, minimization, mitigation, and monitoring actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe 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 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.**	hours prior to ground disturbance. **Methods:** See Mitigation Measure	
Mitigation Measure BIO-[A]: Artificial Nighttime Lighting **Throughout construction and the lifetime operations of the Project, the City of Rancho Mirage and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The City of Rancho Mirage and Project proponent shall ensure that all lighting for the Project is fully shielded, cast downward and directed away from**	**Timing**: Throughout construction and the lifetime operations of the Project. **Methods:** See Mitigation Measure	**Implementation**: City of Rancho Mirage and Project proponent **Monitoring and Reporting**: City of Rancho Mirage

surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). The City of Rancho Mirage and Project proponent 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.		
Mitigation Measure BIO-[B]: Peninsular Bighorn Sheep Barrier **Prior to the installation of water features and landscaping, the Project shall construct a fence, or functionally equivalent structure, surrounding the entire Project area that prohibits the entry of Peninsular bighorn sheep. The fence shall be a minimum of 8 feet high, or functionally equivalent, and shall not contain gaps in which bighorn sheep can be entangled. Gaps shall be 4.3 inches or less. The Project shall maintain a fence, or functionally equivalent structure, as described above, throughout the lifetime of the Project.**	**Timing**: Prior to the installation of water features, and throughout the lifetime of the Project. **Methods:** See Mitigation Measure	**Implementation**: City of Rancho Mirage and Project proponent **Monitoring and Reporting**: City of Rancho Mirage