



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 13, 2024
Sent via email

Governor's Office of Planning & Research

May 13 2024

STATE CLEARINGHOUSE

Ben Torres
Planning Manager
City of Rancho Mirage
69-825 Highway 111
Rancho Mirage, CA 92270
bent@ranchomirageca.gov

AHC Skilled Nursing Facility Project (PROJECT)
Mitigated Negative Declaration (MND)
SCH# 2024040501

Dear Ben Torres:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt 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

¹CEQA 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.

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: Prest Vuksic Greenwood Architects

Objective: The proposed Project is the construction of a one-story, 42,526-square-foot skilled nursing facility. The second phase of development would result in a medical office building, between 5,000 and 10,000 square feet, on the southern portion of the site, adjacent to Gerald Ford Drive. The second medical office building is not currently proposed and will be designed and entitled following the skilled nursing facility. At buildout, the proposed skilled nursing facility and future medical office building would provide a total of 122 parking stalls, including 10 ADA spaces, 4 EV charging stalls, and 54 covered carport spaces. Landscaped area (12,432 square feet) will be provided on-site, featuring drought-tolerant plant species and a water-efficient drip irrigation system. A four-foot wall will line the site along its northern, southern, and western boundaries. The Project will be set back from Gerald Ford Drive and Bob Hope Drive by a minimum of 25 feet.

Location: The proposed Project is an approximately 5.75-acre site located at the northeast corner from the intersection of Bob Hope Drive and Gerald Ford Drive in the City of Rancho Mirage (Assessor's Parcel Numbers 685-120-003 and 685-120-004).

Timeframe: Construction is expected to begin in 2024 and continue through 2025.

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. 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.

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 special status plant species. A complete and accurate assessment of the environmental setting and Project-related impacts to special status plant species 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 special-status plants and the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), as well as revising the mitigation measures for nesting birds and burrowing owl.

1) *Assessment of biological resources*

Page 30 of the MND indicates that "[t]en special status plant species not covered by CVMSHCP have the potential to occur on the Project site: Chaparral sand-verbena [*Abronia villosa var. aurita*], Borrego milk-vetch [*Astragalus lentiginosus var.*

borreganus), pointed dodder [(*Cuscuta californica*)], glandular ditaxis [(*Ditaxis claryana*)], California ditaxis [(*Ditaxis serrata var. californica*)], Abram's spurge [(*Euphorbia abramsiana*)], Arizona spurge [(*Euphorbia arizonica*)], flat-seeded spurge [(*Euphorbia platysperma*)], ribbed cryptantha [(*Johnstonella costata*)], and slender cottonheads [(*Nemacaulis denudata*)]. None of these species were detected on-site during the field assessment, however the assessment was conducted outside of the blooming period." Page 7 of the Project's Biological Resources Assessment dated October 4, 2023 (Biological Assessment), indicates that the field assessment was conducted over a 45-minute period "between the hours of 1215 and 1300 on 23 July 2023." 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. Because the field assessment was conducted outside of the estimated bloom periods for Borrego milk-vetch, glandular ditaxis, Abrams' spurge, Arizona spurge, ribbed cryptantha, and slender cottonheads, it is uncertain if any individuals or significant populations of these species exist within the 5.75-acre Project site. Surveys implemented using recommended protocols and conducted during the appropriate time(s) of the year is an important step in adequately disclosing potential impacts to special-status native plants and sensitive natural communities. CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities² provides the following guidance on timing and number of visits: "Conduct botanical field surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting. Space botanical field survey visits throughout the growing season to accurately determine what plants exist in the project area. This usually involves multiple visits to the project area (e.g., in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special status plants are present."³ The timing and number of visits necessary to determine if special status plants are present is determined by geographic location, the natural communities present, and the weather patterns of the year(s) in which botanical field surveys are conducted." Importantly, the findings of appropriate botanical field surveys for special-status native plants and sensitive natural communities are important in informing appropriate

² Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, California Department of Fish and Wildlife, March 20, 2018. Link: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

³ U.S. Fish and Wildlife Service Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants available at: <https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/>

avoidance, minimization, and mitigation measures and supporting the City in demonstrating that Project impacts are reduced to less than significant.

CDFW recommends that the City include in a revised MND the results of a thorough floristic-based assessment of special-status plants and natural communities performed by a qualified biologist and following CDFW's Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018 or most recent version). Based on findings from a recent floristic-based assessment, CDFW recommends that the MND is revised to include an analysis of direct, indirect, and cumulative impacts to biological resources and identification of appropriate avoidance, minimization, and mitigation measures.

CDFW also recommends that City add the following mitigation measure in **bold** to a revised MND:

Mitigation Measure BIO-[A]: 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 Sensitive Natural Communities (see <https://wildlife.ca.gov/Conservation/Plants>) shall be performed by a qualified biologist. Should any species of native plants designated as rare, threatened, or endangered by state law (excluding CVMSHCP Covered Species) 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.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-2 and MM BIO-3 as well as CDFW-recommended MM BIO-[A] and MM BIO-[B].

2) 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 81 of the MND indicates that “onsite vegetation could provide habitat for nesting birds; therefore, a pre-construction survey will be required to avoid impacts to nesting birds covered by the MBTA and to burrowing owls.” The Project site contains sparse cover of shrubs, predominantly creosote (*Larrea tridentata*), which can support nesting birds. Mitigation Measure BIO-3, in the MND, indicates that if “Project-related disturbance (i.e., grading, vegetation removal, operation of heavy equipment, construction, etc.) cannot be avoided during the nesting season (February 1 to August 31), then a nesting bird clearance survey must be conducted by a qualified ornithologist or biologist immediately prior to scheduled on-site disturbance.” CDFW considers 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., 2017⁴). 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.

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

To the extent feasible, Project-related disturbance (i.e., grading, vegetation removal, operation of heavy equipment, construction, etc.) will be scheduled outside of the peak bird nesting season, which takes place from approximately

⁴ 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.

February 1 through September 15. 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. If Project-related disturbance (i.e., grading, vegetation removal, operation of heavy equipment, construction, etc.) cannot be avoided during the nesting season (February 1 to August 31), then a nesting bird clearance survey must be conducted by a qualified ornithologist or biologist immediately prior to scheduled on-site disturbance. If nesting birds are found, no-work buffer zones of about 100 to 300 feet for unlisted songbirds and 500 feet for listed songbirds and raptors must be established and monitored until young have fledged.

3) *Burrowing Owl*

Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests and eggs 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.”

Permittees of the CVMSHCP must ensure that Covered Activities within their jurisdictions—both inside and outside Conservation Areas—do not result in the take of the burrowing owl individuals, nests, or eggs. Per Section 3.5.6 of the California Department of Fish and Wildlife (CDFW) Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 for the CVMSHCP, “take outside of Conservation Areas will be consistent with sections 3503 and 3503.5 of the Fish and Game Code.” Adding further clarification, Section 3.5.6 of CDFW’s NCCP Permit indicates that “following all

laws applicable to migratory birds (discussed below), the pairs or individuals will not be Taken, just the land around and including the burrows”, and “the HCP/NCCP does not authorize Take of nests and eggs as prohibited by Fish and Game Code sections 3503 and 3503.5 and therefore avoidance measures will have to be undertaken for all projects which have breeding burrowing owls present.” An activity that results in the take of burrowing owl individuals, nests, or eggs would be unlawful and would not be a Covered Activity under the CVMSHCP. Per Section 13.2 of the CVMSHCP Implementing Agreement, County and Cities obligations include, but are not limited to, taking “all necessary and appropriate actions, following applicable land use permit enforcement procedures and practices, to enforce the terms of project approvals for public and private projects, including compliance with the MSHCP, the Permits and this Agreement.” The City has an obligation under the CVMSHCP to ensure the Project does not result in the take of burrowing owl individuals, nests, and eggs.

Page 33 of the Project’s Biological Assessment states that the “Although burrowing owls, and/or sign thereof, were not observed or detected on-site during the assessment, potentially suitable habitat (i.e., sparse Sonoran creosote bush scrub) remains present (Appendix D). No burrows of sufficient size were observed on-site at the time of the assessment (only small invertebrate, lizard and/or rodent burrows were observed). The site is relatively small (6 acres) and surrounded on all sides by existing and on-going development, which has isolated the biological resources on-site from any other available undeveloped open space, which further reduces the overall likelihood of burrowing owl occurring on-site.” In California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs,⁵ 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.⁶ Based on review of aerial imagery, the Project site contains sparse vegetation cover and provides suitable habitat for burrowing owl. The Project site is located near disturbed open areas to the south and an open space area located approximately 220 meters to the southwest that may support burrowing and foraging habitat for burrowing owls; burrowing owls have been found to concentrate foraging efforts within 600 meters of a nest burrow in southern California⁷. In addition, burrowing owls frequently move into

⁵ 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.

⁶ 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.

⁷ Rosenberg, D. K., and K. L. Haley. 2004. The ecology of burrowing owls in the agroecosystem of the Imperial Valley, California. *Studies in Avian Biology* 27:120-135.

disturbed areas prior to and during construction activities since they are adapted to highly modified habitats^{8,9}. Suitable habitat for burrowing owl exists within the Project site and within nearby disturbed areas to the south and open space areas to the southwest, and burrowing owls have the potential to move onto the site prior to and during construction activities.

Although the MND includes Mitigation Measure BIO-2 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-2 with the following additions in **bold** and removals in ~~strikethrough~~:

Mitigation Measure BIO-2: 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 begin coordination with CDFW and USFWS immediately, and 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.

⁸ 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.

⁹ Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. *Condor* 73:162-176.

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. ~~A pre-construction take avoidance survey shall be conducted to confirm that no burrowing owl occur on the Project site. The pre-construction survey must follow CDFG's Staff Report for Burrowing Owls (2012), and must be conducted by a qualified biologist. Unless avoidable, all burrowing owls present must be relocated prior to any on-site ground disturbing activities. Relocation will require prior permission from CDFW, at a minimum.~~

4) Coachella Valley Multiple Species Habitat Conservation Plan

The Project is located within the CVMSHCP Plan Boundary and outside of a Conservation Area. Page 32 of the MND indicates that the "Project site is within the CVMSHCP planning area, and thus is required to pay the land development/mitigation fee". Section 5.2.1.1 of the CVMSHCP indicates that "Local jurisdictions will impose a mitigation fee on new Development within the Plan Area that impacts vacant land containing Habitat for the Covered Species or any of the conserved natural communities in the Plan through adoption, or amendment of an existing fee ordinance." The Project site contains suitable habitat for burrowing owl and other CVMSHCP Covered Species as further discussed on page 30 of the MND; therefore, the City is required to impose a local development fee for the Project. To document this obligation, CDFW recommends the City add the following mitigation measure to a revised MND:

Mitigation Measure BIO-[B]: CVMSHCP Compliance

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

5) Landscaping

Page 52 of the MND indicates that the "proposed landscaping will feature drought-tolerant plant species and an efficient drip irrigation system." 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 (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 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

Ben Torres, Planning Manager
City of Rancho Mirage
May 13, 2024
Page 12

sufficient information for a meaningful review of impacts to biological resources, including an assessment of impacts associated with special status plants. The CEQA Guidelines indicate that recirculation is required when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that the MND is revised to include a complete assessment of biological resources (special status plants), and that the MND is 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:

84F92FFEEFD24C8...

Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

ec:

Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW
Heather.Brashear@Wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Vincent James, U.S. Fish and Wildlife Service
vincent_james@fws.gov

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Mitigation Measures	Timing and Methods	Responsible Parties
---------------------	--------------------	---------------------

<p>Mitigation Measure BIO-3: Nesting Birds</p> <p>To the extent feasible, Project-related disturbance (i.e., grading, vegetation removal, operation of heavy equipment, construction, etc.) will be scheduled outside of the peak bird nesting season, which takes place from approximately February 1 through September 15. 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.</p>	<p>Timing: No more than 3 days prior to vegetation removal or ground-disturbing activities.</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Rancho Mirage and Project proponent</p> <p>Monitoring and Reporting: City of Rancho Mirage</p>
<p>Mitigation Measure BIO-2: Burrowing Owl Surveys</p> <p>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 <i>Staff Report on Burrowing Owl Mitigation</i> prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall begin coordination with CDFW and USFWS immediately, and 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</p>	<p>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 hours prior to</p>	<p>Implementation: City of Rancho Mirage and Project proponent</p> <p>Monitoring and Reporting: City of Rancho Mirage</p>

<p>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.</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 (2012 or most recent version)</i>. Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>	<p>ground disturbance.</p> <p>Methods: See Mitigation Measure</p>	
<p>Mitigation Measure BIO-[A]: Special-Status Plants</p> <p>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 Sensitive Natural Communities (see https://wildlife.ca.gov/Conservation/Plants) shall be performed by a qualified biologist. Should any species of native plants designated as rare, threatened, or endangered by state law (excluding CVMSHCP Covered Species) be present in the</p>	<p>Timing: Prior to Project Construction Activities</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Rancho Mirage and Project proponent</p> <p>Monitoring and Reporting: City of Rancho Mirage</p>

<p>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>Mitigation Measure BIO-[B]: CVMSHCP Compliance</p> <p>Prior to construction and issuance of any grading permit, the City of Rancho Mirage shall ensure compliance with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and its associated Implementing Agreement and shall ensure the collection of payment of the CVMSHCP Local Development Mitigation Fee and transfer of revenues to the Coachella Valley Conservation Commission.</p>	<p>Timing: Prior to construction and issuance of any grading permit</p> <p>Methods: See Mitigation Measure</p>	<p>Implementation: City of Rancho Mirage and Project proponent</p> <p>Monitoring and Reporting: City of Rancho Mirage</p>