



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



July 9, 2024  
*Sent via email*

Pilar Lopez  
Senior Planner  
City of Rancho Mirage  
69-825 Highway 111  
Rancho Mirage, CA 92270  
[pilarl@ranchomirageca.gov](mailto:pilarl@ranchomirageca.gov)

Via Vail Apartments Project (PROJECT)  
Mitigated Negative Declaration (MND)  
SCH# 2024060305

Dear Pilar Lopez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of 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.<sup>1</sup>

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

## **CDFW ROLE**

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

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

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:** The Pacific Companies

**Objective:** The proposed Project includes a mix of two-story residential buildings, apartment-style units, a clubhouse building, outdoor recreational spaces, and onsite parking. A mix of native and non-native trees and shrubs are proposed in the Project's conceptual landscaping plan. The Project will produce new sources of light and glare primarily from landscaping lighting, safety and security lighting on building exteriors, and vehicles accessing the site.

**Location:** The proposed Project is located on an existing vacant, undeveloped parcel (APN 685-090-011) located south of Via Vail, between Monterey Avenue and Key Largo Avenue in the City of Rancho Mirage, County of Riverside. The proposed Project is adjacent to vacant land to the west, south, and portions of the east. The geographic coordinates near the approximate center of the project area are 33.798563° north latitude and -116.393781° west longitude.

**Timeframe:** The MND does not provide details on a timeframe for Project implementation.

## **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.

### Mitigation Measures

CEQA requires that a 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, a Local Development Mitigation Fee associated with the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), and salvage of sand-dependent Covered Species, 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.).

Permittees of the CVMSHCP must ensure that Covered Activities within their jurisdictions—both inside and outside Conservation Areas—do not take, possess, or needlessly destroy the nest or eggs of nesting birds. 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." 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.”

Page 96 of the MND indicates that the “site may provide habitat for burrowing owl and nesting birds protected by the MBTA.” Page 6 of the Project’s Biological Assessment indicates that onsite, shrubs observed include “creosote bush (*Larrea tridentata*), four-wing saltbush (*Atriplex canescens*), dyebush (*Psoralethamnus emoryi*), and athel (*Tamarix aphylla*)”. The Project site contains suitable habitat for nesting birds.

The MND includes Mitigation Measure BIO-2, stating that “if ground disturbance or tree or plant removal is proposed between February 1st and August 31st, a qualified biologist must conduct a nesting bird survey within 7 to 10 days of initiation of grading onsite, focusing on MBTA covered species.” CDFW considers the Mitigation Measure BIO-2 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. CDFW 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<sup>2</sup>). 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-2 with the following additions in **bold** and removals in ~~strikethrough~~:

### **Mitigation Measure BIO-2: 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.**

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<sup>2</sup> 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.

**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 ground disturbance or tree or plant removal is proposed between February 1st and August 31st, a qualified biologist must conduct a nesting bird survey within 7 to 10 days of initiation of grading onsite, focusing on MBTA covered species. If active nests are reported, then species specific measures must be prepared. At a minimum, grading in the vicinity of a nest must be postponed until the young birds have fledged. For construction that occurs between September 1st and January 31st, no pre-removal nesting bird survey is required. In the event active songbird nests are found, exclusionary fencing must be placed 200 feet around the nest until such time as nestlings have fledged. Nests of raptors must be provided a 500-foot buffer.~~

## **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.”

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 5 of the Project’s Biological Assessment states that the “entire site and adjacent properties were also assessed for burrowing owl (*Athene cunicularia*). Inaccessible areas were scanned for burrowing owl habitat and sign (i.e., burrows & perches with whitewash) with binoculars.” Page 17 of the Biological Assessment indicates that “no burrowing owls or their sign were present on site. Also, no burrows or burrow surrogates that could be used by burrowing owls were present on the site at the time of this survey.” The MND and supporting documents lack a discussion of the methods used to conduct a habitat assessment and surveys for burrowing owl and if focused surveys, conducted independently of other surveys, were completed. CDFW recommends that a habitat assessment and focused surveys for burrowing owl are conducted independently of other biological survey activities. 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*,<sup>3</sup> the number of suitable and occupied burrows within the Project site and surrounding areas is unknown. Despite the limited information provided in the MND on if and how a habitat assessment for burrowing owl was conducted, CDFW considers the Project site to contain suitable habitat for burrowing owl. CDFW notes that in California, preferred habitat for burrowing owl is generally typified by short, sparse vegetation with few shrubs,<sup>4</sup> and that burrowing owls may occur in ruderal grassy fields, vacant lots, and pastures if the vegetation

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<sup>3</sup> California Department of Fish and Game (CDFG). 2012. Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

<sup>4</sup> 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.

structure is suitable and there are useable burrows and foraging habitat proximity.<sup>5</sup> In addition, burrowing owls frequently move into disturbed areas prior to and during construction activities since they are adapted to highly modified habitats.<sup>6,7</sup> Based on review of historical aerial imagery using Google Earth Pro, the Project site and surrounding areas to the south and west contain intact native habitat with sparse vegetation cover that is suitable nesting and foraging habitat for burrowing owl.

Because suitable habitat for burrowing owl 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.

Although the MND includes Mitigation Measure BIO-1 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-1 with the following additions in **bold** and removals in ~~strikethrough~~:

### **Mitigation Measure BIO-1: 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**

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Coulombe, H. N. 1971. Behavior and population ecology of the Burrowing Owl, *Speotyto cunicularia*, in the Imperial Valley of California. *Condor* 73:162-176.

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 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.

~~To mitigate potential impacts to burrowing owl, two pre-construction surveys must be conducted in accordance with California Department of Fish and Wildlife protocol. The first survey must occur between 14 to 30 days prior to ground disturbance and the second survey must occur within 24 hours of the initiation of ground disturbance activities. If no owls are detected during those surveys, ground disturbance may proceed without further consideration of this species. If burrowing owls are detected during the survey, avoidance and minimization measures will be required. A Burrowing Owl Relocation and Management Plan will be prepared to establish the standard procedure for how the burrowing owl will be actively or passively relocated per the California Department of Fish and Wildlife guidelines.~~

### **3) Artificial Nighttime Lighting**

Pate 27 of the MND indicates that the proposed Project will result in new sources of artificial nighttime lighting, including "light and glare primarily from landscaping lighting,



safety and security lighting on building exteriors, and vehicles accessing the site.” The Project is located adjacent to open-space areas to the south and west of the Project site—areas that provide suitable nesting, roosting, foraging, and refugia habitat for birds, migratory birds that fly at night, bats, and 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.<sup>8</sup> Many species use photoperiod cues for communication (e.g., bird song<sup>9</sup>), determining when to begin foraging,<sup>10</sup> behavioral thermoregulation,<sup>11</sup> and migration.<sup>12</sup> Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.<sup>14</sup>

Page 27 of the MND indicates, “lighting is required to comply with Municipal Code Section 17.18.050 (Exterior glare, heat, and light) which mandates the exterior use of light to be focused downward by a shield.” While these plans for shielding artificial nighttime lighting support the Project in limiting lighting impacts to biological resources within areas surrounding the Project site, CDFW considers these plans insufficient in scope and timing to reduce impacts to a level less than significant. To support the City in avoiding or reducing impacts of artificial nighttime lighting on biological resources to less than significant, CDFW recommends 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**

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<sup>8</sup> 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.

<sup>9</sup> Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

<sup>10</sup> Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

<sup>11</sup> Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.

<sup>12</sup> Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.

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) Coachella Valley Multiple Species Habitat Conservation Plan**

##### Salvage of Sand-Dependent Covered Species

Section 6.6.1 of the CVMSHCP (Obligations of Local Permittees) states that within and outside Conservation Areas “on parcels approved for Development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species in accordance with the Implementation Manual.” Page 41 of the MND indicates that Coachella Valley round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*), Palm Springs pocket mouse (*Perognathus longimembris*), and Coachella Valley milkvetch (*Astragalus lentiginosus var. coachellae*) have a low potential to occur onsite. Also, the Project site contains CVMSHCP modeled habitat for two additional CVMSHCP Covered Species including Coachella Valley fringe-toed lizard (*Uma inornata*) and flat-tailed horned lizard (*Phrynosoma mcallii*). To be consistent with the CVMSHCP, CDFW recommends that the City include in a revised MND the following mitigation measure:

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

**Prior to vegetation removal or ground-disturbing activities, the City of Rancho Mirage will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species within the Project site.**

##### Local Development Mitigation Fee

The Project is located within the CVMSHCP Plan Boundary and outside of a Conservation Area. Page 96 of the MND indicates that “the Project will be required to pay the Development mitigation Fee to mitigate for potential impacts to species covered under the CVMSHCP”. To document the City’s obligation as a Local Permittee under the CVMSHCP to impose a local development mitigation fee for this Project, CDFW recommends the City add the following mitigation measure to a revised MND:

##### **Mitigation Measure BIO-[C]: 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**

Exhibit 6 of the MND is a conceptual landscape plan for the Project showing the use of a combination of native and non-native trees and shrubs. 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 Mitigated Negative Declarations 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.

Pilar Lopez, Senior Planner  
City of Rancho Mirage  
July 9, 2024  
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(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 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](mailto: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  
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Peter Satin, Coachella Valley Conservation Commission  
[psatin@cvag.org](mailto:psatin@cvag.org)

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

Mitigation Measures	Timing and Methods	Responsible Parties
<p><b>Mitigation Measure BIO-2: Nesting Birds</b></p> <p>Regardless of the time of year, nesting bird surveys shall be performed by a qualified avian biologist no more than 3 days prior to vegetation removal or ground-disturbing activities. 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><b>Timing:</b> No more than 3 days prior to vegetation removal or ground-disturbing activities.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City of Rancho Mirage and Project proponent</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>
<p><b>Mitigation Measure BIO-1: Burrowing Owl Surveys</b></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 avoidance, minimization, mitigation, and monitoring</p>	<p><b>Timing: Focused surveys:</b> Prior to vegetation removal or ground-disturbing activities. <b>Pre-construction surveys:</b> No less than 14 days prior to start of Project-related activities and within 24 hours prior to</p>	<p><b>Implementation:</b> City of Rancho Mirage and Project proponent</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>

<p>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 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><b>Methods:</b> See Mitigation Measure</p>	
<p><b>Mitigation Measure BIO-[A]: Artificial Nighttime Lighting</b></p> <p>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,</p>	<p><b>Timing:</b> Throughout construction and the lifetime operations of the Project.</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City of Rancho Mirage and Project proponent</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>

<p>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 <a href="http://darksky.org/">http://darksky.org/</a>). 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.</p>		
<p><b>Mitigation Measure BIO-[B]: Salvage of Sand-Dependent Covered Species</b></p> <p>Prior to vegetation removal or ground-disturbing activities, the City of Rancho Mirage will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species within the Project site.</p>	<p><b>Timing:</b> Prior to vegetation removal of ground-disturbing activities</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City of Rancho Mirage and Project proponent</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>
<p><b>Mitigation Measure BIO-[C]: CVMSHCP Compliance</b></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><b>Timing:</b> Prior to construction and issuance of any grading permit</p> <p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Implementation:</b> City of Rancho Mirage</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>