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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



August 26, 2024  
*Sent via email*

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9-Lot Subdivision (Tentative Tract Map 38266) Project (PROJECT)  
Mitigated Negative Declaration (MND)  
SCH# 2024071147

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:** La Paloma Homes, Inc.

**Objective:** The Project proposes a Tentative Tract Map No. 38266 to subdivide one existing parcel into nine residential lots and three lettered lots, including a private street. The Project site is 5.04 gross acres and has the underlying zoning designation of Very Low Density Residential. The proposed residential lot sizes range from 18,000 square feet to 20,840 square feet. The Project site contains undeveloped land with sparse desert scrub to the west and east and across Via Florencia road to the north. Drought tolerant landscaping will be planted throughout the Project site. The proposed Project's lighting would be designed to prevent emissions of glare or light beyond the property line.

**Location:** The proposed 5-acre Project is located approximately 300 feet east of the intersection of Via Florencia and Landy Lane on the southside of Via Florencia in the City of Rancho Mirage, CA, 92270. The proposed Project is located within Assessor's Parcel Number 685-100-009.

**Timeframe:** The Project proposes construction starting in 2024 and ending in 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 and burrowing owl. A complete and accurate assessment of the environmental setting and Project-related impacts to special-status plant species and 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, Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) Compliance, and salvage of sand-dependent Covered Species; adding separate stand-alone measures for nesting birds and burrowing owl; and revising the mitigation measure for special-status plants.

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

Table 4-1 on Page 5 of the MND's General Biological Resources Assessment (Biological Assessment), dated October 13, 2022, lists special-status plants that have been documented in the Cathedral City quad of the property. The Biological Assessment indicates that general biological surveys were conducted on October 4, 2022, which is outside of the typical bloom period for most of the annual plants listed in

Table 4-1, including chaparral sand-verbena (*Abronia villosa* var. *aurita*), Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*), flat-seeded spurge (*Euphorbia platysperma*), and slender cottonheads (*Nemacaulis denudata* var. *gracilis*). Because general biological surveys were conducted outside of the typical bloom period for the rare plant species listed above, it is uncertain if any individuals or significant populations of these species exist within the 5-acre Project site. Using surveys implemented according to 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 Communities<sup>2</sup> 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.<sup>3</sup> 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." The findings of appropriate botanical field surveys for special-status native plants and sensitive natural communities are important in informing appropriate 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 recent and 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.

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<sup>2</sup> 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>

<sup>3</sup> 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/>

Although the MND includes Biological Resources Mitigation No. 2 for focused plant surveys, 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 Biological Resources Mitigation No. 2 with the following additions in **bold** and removals in ~~strikethrough~~:

## **Biological Resources Mitigation No. 2: Special-Status Plants**

**Prior to Project construction activities, a thorough, recent, floristic-based assessment of special-status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see <https://wildlife.ca.gov/Conservation/Plants>) shall be performed by a qualified biologist. Should any state-listed plant species (excluding CVMSHCP Covered Species) be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should 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.** ~~A focused plant survey should be considered for all special status plant species that have the potential to occur on the site to be performed during the blooming season (April - June) to determine the potential environmental effects of the proposed projects on special status plants and sensitive natural communities following recommended protocols by the Department of Fish and Wildlife.~~

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) in Attachment 1 for revised Biological Resources Mitigation No. 2, as well as CDFW-recommended Biological Resources Mitigation Measures A, B, C, D, and E.

### **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.).

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 2 of the Project’s Biological Assessment indicates that the “site contains a few species of plant which include the creosote bush (*Larrea tridentata*), Asian mustard (*Brassica tournefortii*), Schott’s Dalea (*Psoralea schottii*).” Creosote bush and Schott’s dalea are perennial plants that have the potential to support nesting birds, and ground-nesting birds also have potential to use the site. The MND includes Biological Resources Mitigation No. 1, which indicates that “pre-construction surveys for burrowing owls, desert tortoise, and nesting birds protected under the Migratory Bird Treaty Act and Section 3503 of the California Fish and Wildlife Code shall be conducted prior to the commencement of Project-related ground disturbance. a. Appropriate survey methods and timeframes shall be established, to ensure that chances of detecting the target species are maximized. In the event that listed species, such as the desert tortoise, are encountered, authorization from the USFWS and CDFW must be obtained. If nesting birds are detected, avoidance measures shall be implemented to ensure that nests are not disturbed until after young have fledged. b. Pre-construction surveys shall encompass all areas within the potential footprint of disturbance for the project, as well as a reasonable buffer around these areas.” CDFW finds this measure, specifically the language associated with nesting birds, 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<sup>4</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.

To support the City in reducing impacts to nesting birds to a level less than significant, CDFW recommends that the City replace Biological Resources Mitigation No. 1, specifically the language associated with nesting birds, with the following stand-alone mitigation measure for nesting birds:

### **Biological Resources Mitigation Measure [A]: 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.**

### **3) *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

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<sup>4</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.

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.”

The California Department of Fish and Wildlife (CDFW) Natural Community Conservation Plan (NCCP) Permit #2835-2008-001-06 does not provide Take Authorization for burrowing owl individuals, nests, or eggs. Section 3.5.6 of the NCCP Permit states burrowing owl “pairs or individuals will not be Taken” and reiterates that, consistent with Fish and Game Code sections 3505 and 3503.5, the “HCP/NCCP does not authorize Take of [burrowing owl] nests [or] eggs[.]” Therefore, throughout the CVMSHCP area—both within and without Conservation Areas—Permittees must ensure that activities occurring within their jurisdictions do not result in the take, possession, or destruction of burrowing owl individuals, nests, or eggs. Any activity occurring within the CVMSHCP area 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.

Page 9 of the Biological Assessment indicates that the “site is located within documented burrowing owl habitat according to CNDDDB (2022). No owls were seen on the property during the survey, and minimal suitable habitat was observed. Burrowing owls are not expected to occur on the site due to lack of suitable vegetation and burrows.” Page 4 of the Biological Assessment indicates that “following completion of the initial reconnaissance survey, habitat assessments were conducted for the desert tortoise and burrowing owl.” 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>5</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 how a habitat assessment and surveys for burrowing owl were conducted, CDFW considers the Project site to contain

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<sup>5</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>



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>6</sup> 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.<sup>7</sup> Page 2 of the Biological Assessment indicates that California ground squirrel (*Otospermophilus beecheyi*) were not observed but “are expected to occur on site given their abundance in the surrounding areas.” In California, the burrows of California ground squirrel and round-tailed ground squirrel are frequently used by burrowing owls.<sup>8</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>9,10</sup> Based on review of historical aerial imagery using Google Earth Pro, the Project site and surrounding areas to the west, east, and north contain habitat with sparse cover of native vegetation that is suitable nesting and foraging habitat for burrowing owl.

CDFW recommends the MND is revised to include the findings, including survey methods and survey reports, from focused burrowing owl surveys following the guidelines in the *Staff Report on Burrowing Owl Mitigation* along with appropriate avoidance, minimization, and mitigation measures. Adequate information about burrowing owls within and surrounding the Project site support CDFW in effectively assessing potential impacts and recommending appropriate avoidance, minimization, and mitigation measures to support the City and Project proponent in reducing impacts to burrowing owls to a level less than significant.

The MND includes Biological Resources Mitigation No. 1, which combines mitigation measures for nesting birds, burrowing owl, and desert tortoise. CDFW considers this mitigation measure, specifically the language associated with burrowing owl, to be insufficient in scope and timing to reduce impacts to burrowing owl to a level less than significant. CDFW recommends that the City replace Biological Resources Mitigation No. 1, specifically the language associated with burrowing owl, with the following stand-alone mitigation measure for burrowing owl:

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<sup>6</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.

<sup>7</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>8</sup> Ronan, N. A. 2002. Habitat selection, reproductive success, and site fidelity of burrowing owls in a grassland ecosystem. Thesis, Oregon State University, Corvallis, Oregon, USA.

<sup>9</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>10</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.

## **Biological Resources Mitigation Measure [B]: 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* (CDFG, 2012 or most recent version) prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall 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 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* (CDFG, 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.**

### ***4) Artificial Nighttime Lighting***

Page 16 of the MND indicates that the “project’s lighting would be required to comply with Chapter 17.18.050 of the Rancho Mirage Municipal Code. The proposed project’s lighting must be designed so as to prevent emissions of glare or light beyond the property line. All exterior lighting at the project site would be conditioned to be Dark-Sky

compliant, in order to reduce the amount of light emitted at the project site at night.” The MND lacks additional information on exterior lighting plans, such as outdoor security, recreational, and landscape lighting. The Project is located adjacent to open-space areas to the west and east and across the street to the north—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>11</sup> Many species use photoperiod cues for communication (e.g., bird song<sup>12</sup>), determining when to begin foraging,<sup>13</sup> behavioral thermoregulation,<sup>14</sup> and migration.<sup>15</sup> Phototaxis, a phenomenon that results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it.<sup>15</sup>

While plans for shielding artificial lighting support the Project in limiting lighting impacts to biological resources within areas surrounding the Project site, CDFW considers these minimization 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:

### **Biological Resources Mitigation Measure [C]: 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**

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<sup>11</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>12</sup> Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.

<sup>13</sup> Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127.

<sup>14</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>15</sup> Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.

**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.**

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

#### Local Development Mitigation Fee

The City is a Permittee of the CVMSHCP; however, the MND and its supporting documents lack discussion of the City's fulfillment of Permittee obligations and Project compliance with CVMSHCP terms and requirements. The Project is located within the CVMSHCP Plan Boundary and outside of a Conservation Area. 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 CVMSHCP modeled habitat for several Covered Species, including, but not limited to, Coachella Valley fringe-toed lizard and flat-tailed horned lizard, and contains suitable habitat for burrowing owl; 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:

#### **Biological Resources Mitigation Measure [D]: CVMSHCP Compliance**

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

#### Salvage of Sand-Dependent Covered Species

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." The Project site contains CVMSHCP modeled habitat for flat-tailed horned lizard (*Phrynosoma mcallii*) and Coachella Valley fringe-toed lizard (*Uma inornate*) and is located within remnants of aeolian sand habitat in an area known as the Big Dune south of Interstate 10, where there is the potential for populations of dune-dependent Covered Species to persist. For Coachella Valley fringe-toed lizard,

Table 4-1 of the Biological Assessment indicates the “site does support minimum suitable habitat for the species; however, none were observed during field surveys.” For flat-tailed horned lizard, Table 4-1 of the Biological Assessment states that the “site does not support minimum suitable habitat for the species; and none were observed during field surveys.” The Biological Assessment lacks a discussion of survey methods used to determine presence/absence of dune-dependent Covered Species and why the site does not support minimum suitable habitat for flat-tailed horned lizard. CDFW recommends the City conduct presence/absence surveys for sand-dependent Covered Species within the Project site to inform the need for salvage activities. To determine presence/absence of sand-dependent Covered Species, CDFW recommends species-specific presence/absence survey methods outlined in the CVMSHCP-approved *Aeolian Sand Communities and Species Monitoring Protocols*<sup>16</sup>, available here: <https://cvmshcp.org/Monitoring/BMP/AeolianSand.pdf>.

To be consistent with CVMSHCP obligations, CDFW recommends that the City include in a revised MND the following mitigation measure:

**Biological Resources Mitigation Measure [E]: Salvage of Sand-Dependent Covered Species**

**Prior to vegetation removal or ground-disturbing activities, the City of Rancho Mirage and Project proponent will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species determined to occupy the Project site through species-specific presence/absence surveys.**

**6) Landscaping**

Page 27 of the MND states that landscaping “would be provided along the roadway frontages and sidewalks and would include acacias and date palm trees, would include date palm and acacia trees, agave shrubs, and drought tolerant (xeriscape) ground cover.” Page 77 of the MND indicates that “drought tolerant landscaping will be planted throughout the project site.” No additional details are provided on the Project’s 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.

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<sup>16</sup> U.C. Riverside Center for Conservation Biology, *Aeolian Sand Communities and Species Monitoring Protocols*, Coachella Valley Conservation Commission, March 8, 2012.

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 sufficient information for a meaningful review of impacts to biological resources, including a thorough assessment of special-status plants and burrowing owls. CDFW recommends that a revised MND, including a complete assessment of biological resources (assessment of special-status plants and burrowing owls), be recirculated for

Pilar Lopez, Senior Planner  
City of Rancho Mirage  
August 26, 2024  
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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](mailto:jacob.skaggs@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
84F92FFEEFD24C8...

Kim Freeburn  
Environmental Program Manager

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

ec:

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

Mitigation Measures	Timing and Methods	Responsible Parties
<b>Biological Resources Mitigation No. 2: Special-Status Plants</b> <b>Prior to Project construction activities, a thorough, recent, floristic-based assessment of special-status</b>	<b>Timing:</b> Prior to Project construction activities.	<b>Implementation:</b> City of Rancho Mirage and Project proponent

<p>plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see <a href="https://wildlife.ca.gov/Conservation/Plants">https://wildlife.ca.gov/Conservation/Plants</a>) shall be performed by a qualified biologist. Should any state-listed plant species (excluding CVMSHCP Covered Species) be present in the Project area, the Project proponent shall obtain appropriate CESA authorization for those species prior to the start of Project activities. Should 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.</p>	<p><b>Methods:</b> See Mitigation Measure</p>	<p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>
<p><b>Biological Resources Mitigation Measure [A]: 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</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>authority to stop work if nesting pairs exhibit signs of disturbance.</p>		
<p><b>Biological Resources Mitigation Measure [B]:        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> (CDFG, 2012 or most recent version) prior to vegetation removal or ground-disturbing activities. If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall 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 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</i> (CDFG, 2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines</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 ground disturbance.</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>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><b>Biological Resources Mitigation Measure [C]:        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, 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>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><b>Biological Resources Mitigation Measure [D]:        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 and Project proponent</p> <p><b>Monitoring and Reporting:</b> City of Rancho Mirage</p>

<p><b>Biological Resources Mitigation Measure [E]: Salvage of Sand-Dependent Covered Species</b></p> <p><b>Prior to vegetation removal or ground-disturbing activities, the City of Rancho Mirage and Project proponent will collaborate with the Coachella Valley Conservation Commission to plan and implement a salvage of sand-dependent Covered Species determined to occupy the Project site through species-specific presence/absence surveys.</b></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>
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