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



Governor's Office of Planning & Research

September 30, 2020

**Sep 30 2020**

Ms. Monique Garibay  
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Planning Department  
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## STATE CLEARINGHOUSE

**Subject: Tentative Tract Map No. 060367, City of Lancaster, Los Angeles County**

Dear Ms. Garibay:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Tentative Tract Map No. 060367 (Project). The Tentative Tract Map's (TTM) supporting documentation includes a *Biological Resource Assessment of TTM 60367, Lancaster, California*.

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's 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 & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect State fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game 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 & Game Code, § 2050 et seq.), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

Ms. Monique Garibay  
City of Lancaster  
Page 2 of 6  
September 30, 2020

## Project Description and Summary

**Objective:** The proposed Project is to subdivide the parcels for a 117-lot residential subdivision on 30 acres of former agricultural land on the east side of Lancaster, California. Project activities would consist of grading, installation of access roads and utilities, and eventual home construction. The entire site is expected to be cleared and graded prior to construction of a residential neighborhood.

**Location:** The Project site is located at the northwest corner of Lancaster Boulevard and 40<sup>th</sup> Street East in the eastern portion of the City of Lancaster in Los Angeles County, California. Assessor's Parcel Numbers (APNs) associated with the Project are: 3150-021-019, 3150-021-020, 3150-021-022, 3150-021-025, and 3150-021-026.

## Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City of Lancaster (City) in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

## Project Description and Related Impact Shortcoming

### Comment #1: Impacts to Burrowing Owl (*Athene cunicularia*)

**Issue #1:** The supplemental biological resources report, *Biological Resource Assessment of TTM 60367, Lancaster, California dated July 27, 2020*, indicates that "no burrowing owls [*Athene cunicularia*] or their sign were observed within the study site during the field survey". But according to page 6, "California ground squirrel (*Citellus beecheyi*) burrows and the irrigation infrastructures observed within the study area provide future potential cover sites for burrowing owls"

A review of the California Natural Diversity Database (CNDDDB) indicates two occurrences of burrowing owl in the parcels immediately south of the Project site, across Lancaster Boulevard. Burrowing owls are also known to regularly occur throughout the Lancaster area.

**Issue #2:** Burrowing owl survey protocols require four surveys during the breeding season. However, only one line transect survey was conducted for this Project on the July 16 and 17, 2020.

**Specific impact:** Identification of potential for burrowing owls during non-winter months, including the nesting season, may be missed, especially with only one site visit. Therefore, the Project may result in direct and indirect burrowing owl mortality or injury; the disruption of natural burrowing owl breeding behavior; and loss of breeding, wintering and foraging habitat for the species. Project impacts would contribute to statewide population declines for burrowing

Ms. Monique Garibay  
City of Lancaster  
Page 3 of 6  
September 30, 2020

owl. Within the Antelope Valley, the species persists in low densities and continues to experience significant direct and cumulative habitat loss.

**Why impact would occur:** Burrowing owls have been known to use highly degraded and marginal habitat where existing burrows or stem pipes are available. Nest and roost burrows of the burrowing owl are most commonly dug by ground squirrels, but they have also been known to use a variety of other species dens or holes, including coyote (Gervais, J.A., Rosenberg, D.K., & Comrack, L.A., 2008). Impacts to burrowing owl could result from vegetation clearing and other ground disturbing activities. Project disturbance activities may result in crushing or filling of active owl burrows, causing the death or injury of adults, eggs, and young. The Project will remove burrowing owl foraging habitat by eliminating native vegetation that supports essential rodent, insect, and reptile that are prey for burrowing owl. Rodent control activities could result in direct and secondary poisoning of burrowing owl ingesting treated rodents.

**Evidence impact would be significant:** Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86 and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Without appropriate take avoidance surveys prior to Project operations including, but not limited to, ground and vegetation disturbing activities and rodent control activities, adverse impacts to burrowing owl may occur because species presence/absence has not been verified. In addition, burrowing owl qualifies for enhanced consideration afforded to species under CEQA, which can be shown to meet the criteria for listing as endangered, rare or threatened (CEQA Guidelines, § 15380(d)).

Insufficient survey efforts for burrowing owl may conclude false negative results, which would not require avoidance and mitigation measure implementation. Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS).

#### **Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** To reduce impacts to burrowing owl, CDFW recommends that the Project adhere to CDFW’s March 7, 2012, *Staff Report on Burrowing Owl Mitigation* as referenced in the *Biological Resource Assessment of TTM 60367, Lancaster, California*. All survey efforts should be conducted prior to any project activities that could result in habitat disturbance to soil, vegetation or other sheltering habitat for burrowing owl. In California, the burrowing owl breeding season extends from February 1 to August 31 with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15.

**Mitigation Measure #2:** Permanent impacts to occupied owl burrows and adjacent foraging habitat should be offset by setting aside replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate non-wasting endowment to provide for the long-term management of mitigation lands. CDFW recommends that the City require a burrowing owl

Ms. Monique Garibay  
City of Lancaster  
Page 4 of 6  
September 30, 2020

mitigation plan be submitted to CDFW for review and comment prior to project implementation.

**Mitigation Measure #3:** For proposed preservation and/or restoration, the final environmental document should include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. The objective should be to offset the project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include, but are not limited to, restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be provided for the long-term monitoring and management of mitigation lands. CDFW recommends that mitigation occur at a State-approved bank or via an entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012), which amended Government Code sections 65965-65968. Under Government Code section 65967(c), the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

**Mitigation Measure #4:** Project use of rodenticides that could result in direct or secondary poisoning to burrowing owl should be avoided.

**Comment #2: Impacts to Mohave Ground Squirrel (*Xerospermophilus mohavensis*)**

**Issue:** The supplemental biological resources report, *Biological Resource Assessment of TTM 60367, Lancaster, California dated July 27, 2020*, indicates that “[t]he study area was located within the geographic range of MGS [Mohave ground squirrel (*Xerospermophilus mohavensis*)].” According to CNDDDB, there are two occurrences of MGS within 5 miles to the southwest and southeast of the Project site. Much of the remaining Mohave ground squirrel habitat is known to exist to the east of the City of Lancaster.

**Specific impact:** The Project may result in mortality or injury to Mohave ground squirrel and their habitat resulting in further declines within the range for this species.

**Why impact would occur:** Use of heavy equipment and other ground disturbance may kill or injure Mohave ground squirrel, alter natural behavior, and deposit dust on Mohave ground squirrel food plants such as saltbush (*Atriplex* spp.). Project related excavations could result in entrapment of Mohave ground squirrel where they are exposed to extreme temperatures, drowning, increased predation, deprivation of food and water and being buried by backfilling activities. Open trenches and excavations also pose movement barriers preventing access to habitat.

**Evidence impact would be significant:** Project construction may result in an adverse effect either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS.

Recent survey results (Leitner 2018) identify the Project site within the boundary of the Mohave ground squirrel range. The Mohave ground squirrel has a restricted geographic range in the western Mojave Desert, where it has suffered from habitat loss as a result of conversion or degradation of native vegetation for residential, industrial, and energy-related developments,

Ms. Monique Garibay  
City of Lancaster  
Page 5 of 6  
September 30, 2020

agriculture, recreation, and other human uses. On-going development plans present a serious threat to remaining Mohave ground squirrel populations (CDFW 2010).

### **Recommended Feasible Mitigation Measure(s):**

**Mitigation Measure #1:** Mohave ground squirrel surveys should be conducted wherever the Project is taking place in appropriate habitat within the range of Mohave ground squirrel. Focused Mohave ground squirrel surveys should follow the Department's 2003 Trapping and Survey Guideline (CDFW 2010). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall secure a California Incidental Take Permit (ITP) for Mohave ground squirrel before ground/vegetation disturbance activities commence. The ITP will specify avoidance, minimization and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW approved location and mitigation ratio.

If a survey conducted according to CDFW guidelines results in no capture or observation of Mohave ground squirrel on a Project site, this is not necessarily evidence that the Mohave ground squirrel does not exist on the site or that the site is not actual or potential habitat of the species. However, in the circumstance of such a negative result, the CDFW will stipulate that the Project site harbors no Mohave ground squirrel. This stipulation will expire one year from the ending date of the last trapping on the Project site conducted according to these guidelines. However, if Mohave ground squirrel or other listed species are discovered on the Project site, avoiding take of a listed species and or securing authorization for incidental take of a listed species pursuant to Fish and Game Code Section 2081(b) *et seq.* remains the responsibility of the Project proponent.

**Mitigation Measure #2:** The City may choose to forgo focused Mohave ground squirrel presence/absence surveys and assume presence of Mohave ground squirrel on site. Under this option the City will be issued a California ITP for Mohave ground squirrel prior to ground/vegetation disturbance activities. The Project shall mitigate for temporary and/or permanent impacts to Mohave ground squirrel habitat as specified in conditions of the ITP through habitat acquisition at a CDFW approved location and mitigation ratio.

### **Filing Fees**

The Project, as proposed, could have an impact on fish and/or wildlife, and assessment of 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 fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

### **Conclusion**

We appreciate the opportunity to comment on the project to assist the City of Lancaster in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the project. If you have any questions or comments regarding this letter, please contact Andrew Valand, Environmental Scientist, at [Andrew.Valand@wildlife.ca.gov](mailto:Andrew.Valand@wildlife.ca.gov) or (562) 292-6821.

Ms. Monique Garibay  
City of Lancaster  
Page 6 of 6  
September 30, 2020

Sincerely,

DocuSigned by:  
Erinn Wilson  
9/30/2020  
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Erinn Wilson  
Environmental Program Manager I

cc: CDFW

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**References:**

California Department of Fish and Wildlife [CDFW]. March 7, 2012. Staff Report on Burrowing Owl Mitigation (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>).

California Department of Fish and Wildlife [CDFW]. July 2010. Mohave Ground Squirrel Survey Guidelines (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>).

Gervais, J.A., Rosenberg, D.K., and Comrack, L.A. Burrowing Owl (*Athene cunicularia*). Shuford, W.D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

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