



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201

[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



Governor's Office of Planning &amp; Research

April 9, 2021

**Apr 09 2021****STATE CLEARINGHOUSE**

Ms. Jocelyn Swain  
City of Lancaster  
44933 Fern Avenue  
Lancaster, CA 93534

[JSwain@cityoflanasterca.org](mailto:JSwain@cityoflanasterca.org)

**Subject: Comments on the Mitigated Negative Declaration for Tentative Tract Map No. 61248, City of Lancaster, Los Angeles County**

Dear Ms. Swain:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) for Tentative Tract Map No. 61248 (Project), proposed by the City of Lancaster (City; Lead Agency). Supporting documentation for the Project includes *Biological Resources Assessment of APN 3150-013-032, -039, 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.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Ms. Jocelyn Swain  
City of Lancaster  
April 9, 2021  
Page 2 of 9

## Project Description and Summary

**Objective:** The Project proposes the subdivision and development of a 40-acre former agricultural field. The entire Project site would be graded prior to construction activities. Development would include construction of homes, roads, and utilities.

Biological surveys of the Project site were performed on January 22, 30 and February 1, 2020 (Biological Resources Assessment). The Biological Resources Assessment (BRA) was intended “to provide an assessment of biological resources potentially occurring within or utilizing the proposed project area. Specific focus was on the presence/absence of rare, threatened, and endangered species of plants and wildlife.

**Location:** The Project is located at the southeast corner of Avenue J and 32<sup>nd</sup> Street East in the City of Lancaster. The Los Angeles County Accessor’s Parcel Number (APN) associated with the Project is APN 3150-013-032 and -039.

## Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City in adequately identifying the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the City consider our comments and recommendations when preparing an environmental document that may provide adequate and complete disclosure of the Project’s potential impacts on biological resources [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151].

## Project Description and Related Impact Shortcoming

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

**Issue:** Burrowing owls (*Athene cunicularia*), a California Species of Special Concern (SSC), are known to regularly occur throughout the Lancaster and Palmdale area. The BRA indicates that “California ground squirrel burrows within the project site could provide potential cover sites for burrowing owls.” A review of [California Natural Diversity Database](#) (CNDDB) shows that the Project site has at least one recorded historic observation (CDFW 2021). While the MND includes Mitigation Measure 3 for burrowing owl presence/absence surveys, it does not fully describe the recommended survey protocol and resulting actions should burrowing owls be found.

**Specific impact:** The BRA acknowledges the historic presence of burrowing owl on the Project site but assumes a lack of presence due to development of neighboring properties. Therefore, the Project may result in direct and indirect burrowing owl mortality or injury; disruption of natural burrowing owl breeding behavior; and loss of breeding, wintering and foraging habitat for the species. In addition, burrowing owl survey protocols require multiple surveys to be conducted during the breeding season to determine if, when, and how the site is used by burrowing owls. Burrowing owl nesting season begins as early as February 1 and continues through August 31. Project impacts may contribute to Statewide population declines for burrowing owl.

Ms. Jocelyn Swain  
City of Lancaster  
April 9, 2021  
Page 3 of 9

**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 (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. In addition, the Project may remove burrowing owl foraging habitat by eliminating vegetation that supports essential rodents, insects, and reptiles 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)). In addition, 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](#) (CDFW 2012). 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:** Any permanent impacts to identified 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. In the event of the presence of burrowing owls on site, CDFW recommends that the City require a burrowing owl 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

Ms. Jocelyn Swain  
City of Lancaster  
April 9, 2021  
Page 4 of 9

direct and indirect negative impacts. CDFW recommends that permanent impacts to foraging habitat for burrowing owl be offset by purchasing credits at a CDFW-approved bank based on acreage of impact and vegetation composition.

**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 Nesting Birds**

**Issue:** The Project will require removal or disturbance of shrubs and grasses that could support nesting birds. The Initial Study (IS) states that “[o]ne inactive bird nest was observed within a large rabbit brush during the field survey.” The BRA recognizes that “[v]egetation within the study area provides potential nesting sites for smaller migratory birds.” Therefore, Project-related vegetation clearing, grading, and construction may impact nesting birds.

**Specific impacts:** Construction during the breeding season for nesting birds could result in the incidental loss of fertile eggs or nestlings or otherwise lead to nest abandonment. The Project could also lead to the loss of foraging habitat for sensitive bird species.

**Why impact would occur:** Impacts to nesting birds could result from vegetation clearing and other ground disturbing activities. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable nesting and foraging habitats. Refinement of mitigation measures, such as describing the timing of nesting season, defining avoidance buffers, or demarcation of boundaries should improve preventive actions to avoid impacting active nests.

Mitigation Measure 2 describes the precautions to be taken to mitigate impacts to nesting birds. It describes conducting a survey 14 days prior to the start of ground disturbing activities. This may allow for too much time in between the survey and initiation of Project-related activities. 14 days is enough time for birds to establish and use a nesting site. For example, a horned lark (*Eremophila alpestris*) will generally prepare a nesting site for a couple of days and build a nest in about a week (Beason 1995).

**Evidence impact would be significant:** The loss of occupied habitat or reductions in the number of rare bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Furthermore, nests of all native bird species are protected under State laws and regulations, including Fish and Game Code sections 3503 and 3503.5. CDFW also considers impacts to SSC a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures.

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

**Mitigation Measure #1:** CDFW recommends that a qualified avian biologist with survey experience conduct a thorough survey of all suitable nesting. Surveys should be completed no more than 7 days prior to the beginning of any Project-related ground-disturbing activities or vegetation removal. Surveys should be conducted in the immediate work/disturbance area plus a 500-foot buffer. Positive detections should be reported to CDFW prior to the any Project-related ground disturbing activities or vegetation removal.

Ms. Jocelyn Swain  
City of Lancaster  
April 9, 2021  
Page 5 of 9

**Mitigation Measure #2:** If nesting birds or raptors are identified, a qualified biologist should determine the nesting status and set up species-appropriate no-work buffers for construction activities. CDFW recommends the following minimum no-disturbance buffers be implemented: 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests and 0.5 mile around active CESA-listed bird nests. No Project activities should be allowed inside these buffers until the qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. These buffers should be increased if needed to protect the nesting birds. Buffers should be clearly delineated and marked around the active nest site as directed by the qualified biologist. Temporary fencing and signage should be maintained for the duration of the Project as determined by the qualified biologist. A qualified biologist should advise workers of the sensitivity of the buffered areas. Workers should be advised not to work, trespass, or engage in activities that would disturb nesting birds near or inside the buffer.

It should be noted that the temporary halt of Project activities within nesting buffers during nesting season does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. Additional mitigation would be necessary to compensate for the removal of nesting habitat within the Project site based on acreage of impact and vegetation composition. CDFW should be consulted to determine proper mitigation for impacts to occupied habitat depending on the status of the bird species. Mitigation ratios would increase with the occurrence an SSC and would further increase with the occurrence of a CESA-listed species.

### **Filing Fees**

The Project, as proposed, would 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. Please consider incorporating the attached Biological Mitigation Measure and Recommendation Table into a future environmental document for the Project. 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 [CEQA Guidelines; § 15073(e)]. 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) 342-2142.

Ms. Jocelyn Swain  
City of Lancaster  
April 9, 2021  
Page 6 of 9

Sincerely,

DocuSigned by:

*Steve Gibson*

614D9A782D93439...

Steve Gibson

signing for Erinn Wilson-Olgin  
Environmental Program Manager I  
South Coast Region

ec: CDFW

Victoria Tang, Los Alamitos – [Victoria.Tang@wildlife.ca.gov](mailto:Victoria.Tang@wildlife.ca.gov)

Andrew Valand, Los Alamitos – [Andrew.Valand@wildlife.ca.gov](mailto:Andrew.Valand@wildlife.ca.gov)

Felicia Silva, Los Alamitos – [Felicia.Silva@wildlife.ca.gov](mailto:Felicia.Silva@wildlife.ca.gov)

Ruby Kwan-Davis, Los Alamitos – [Ruby.Kwan-Davis@wildlife.ca.gov](mailto:Ruby.Kwan-Davis@wildlife.ca.gov)

Susan Howell, San Diego – [Susan.Howell@wildlife.ca.gov](mailto:Susan.Howell@wildlife.ca.gov)

CEQA Program Coordinator, Sacramento – [CEQACommentLetters@wildlife.ca.gov](mailto:CEQACommentLetters@wildlife.ca.gov)

State Clearinghouse, Sacramento – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

#### References:

Beason, Robert C. (1995). Horned Lark (*Eremophila alpestris*), version 2.0. In The Birds of North America (P. G. Rodewald, editor). Cornell Lab of Ornithology, Ithaca, New York, USA.

Calflora. 2021. Information on Wild California Plants. Available from: <https://www.calflora.org/>.

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

[CDFW] California Department of Fish and Wildlife. 2021. California Natural Diversity Database. Available from: <https://wildlife.ca.gov/Data/CNDDB>.

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.



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 South Coast Region  
 3883 Ruffin Road  
 San Diego, CA 92123  
 (858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



CDFW recommends the following language to be incorporated into a future environmental document for the Project.

<b>Biological Resources</b>			
	<b>Mitigation Measure</b>	<b>Timing</b>	<b>Responsible Party</b>
<b>MM-BIO-1 – Burrowing Owl Surveys</b>	The Project shall adhere to CDFW’s March 7, 2012, <a href="#">Staff Report on Burrowing Owl Mitigation</a> (CDFW 2012). All survey efforts shall 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.	Prior to Initiation of Project-related activities	City of Lancaster
<b>MM-BIO-2 – Burrowing Owl Replacement Habitat</b>	Any permanent impacts to identified occupied owl burrows and adjacent foraging habitat shall 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 shall include an appropriate non-wasting endowment to provide for the long-term management of mitigation lands. In the event of the presence of burrowing owls on site, CDFW recommends that the City require a burrowing owl mitigation plan be submitted to CDFW for review and comment prior to Project implementation.	Prior to Initiation of Project-related activities	City of Lancaster
<b>MM-BIO-3 – Replacement Habitat Protection</b>	The final environmental document shall include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. CDFW recommends that permanent impacts to foraging habitat for burrowing owl be offset by	Prior to Initiation of Project-	City of Lancaster

Ms. Jocelyn Swain  
 City of Lancaster  
 April 9, 2021  
 Page 8 of 9

	purchasing credits at a CDFW-approved bank based on acreage of impact and vegetation composition.	related activities	
<b>MM-BIO-4 – Use of Rodenticides</b>	Project use of rodenticides that could result in direct or secondary poisoning to burrowing owl shall be avoided.	Prior to Initiation and During Project-related activities	City of Lancaster
<b>MM-BIO-5 – Nesting Bird Surveys</b>	A qualified avian biologist with survey experience shall conduct a thorough survey of all suitable nesting. Surveys shall be completed no more than 7 days prior to the beginning of any Project-related ground-disturbing activities or vegetation removal. Surveys shall be conducted in the immediate work/disturbance area plus a 500-foot buffer. Positive detections shall be reported to CDFW prior to the any Project-related ground disturbing activities or vegetation removal.	Prior to Initiation of Project-related activities	City of Lancaster
<b>MM-BIO-6 – Nesting Bird Avoidance</b>	If nesting birds or raptors are identified, a qualified biologist shall determine the nesting status and set up species-appropriate no-work buffers for construction activities. CDFW recommends the following minimum no-disturbance buffers be implemented: 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests and 0.5 mile around active CESA-listed bird nests. No Project activities shall be allowed inside these buffers until the qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. These buffers shall be increased if needed to protect the nesting birds. Buffers shall be clearly delineated and marked around the active nest site as directed by the qualified biologist. Temporary fencing and signage shall be maintained for the duration of the Project as determined by the qualified biologist. A qualified biologist shall advise workers of the sensitivity of the buffered areas. Workers shall be advised not to	Prior to Initiation and During Project-related activities	City of Lancaster

Ms. Jocelyn Swain  
City of Lancaster  
April 9, 2021  
Page 9 of 9

	work, trespass, or engage in activities that would disturb nesting birds near or inside the buffer.		
--	---	--	--