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**GAVIN NEWSOM, Governor**  
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Governor's Office of Planning & Research

August 23, 2021

**August 23 2021**

**STATE CLEARINGHOUSE**

Ms. Cynthia Campaña  
 City of Lancaster  
 44933 Fern Ave  
 Lancaster, CA 93534  
[CCampana@cityoflanasterca.org](mailto:CCampana@cityoflanasterca.org)

**Subject: Comments on Site Plan Review 21-02, Mitigated Negative Declaration, SCH# 2021070370, City of Lancaster, Los Angeles County**

Dear Ms. Campaña:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) for the Site Plan Review 21-02 (Project) and its supporting documentation, including *Biological Resource Assessment of APN 3386-007-007 Lancaster, California* (BRA), proposed by the City of Lancaster (City; Lead Agency). 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 state-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.

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## Project Description and Summary

**Objective:** The proposed Project consists of the construction of a support/office building, a cogeneration building, and greenhouses to grow lettuce and tomatoes. The proposed Project would be developed into three phases. Phase I includes the construction of an approximately 152,141 square-foot support/office building that would be two stories. It would also include a single-story, 28,731 square-foot cogeneration building. The cogeneration facility would use natural gas to generate electricity to power the support/office building and provide electricity and heat for the greenhouse. The carbon dioxide from the engine exhaust will be used as fertilizer for the plants. In addition, Phase I would include a 10.2-acres of lettuce greenhouses. Phase II includes the construction of 38.4 acres of tomato greenhouses. Phase III includes the construction of 9.9 acres of lettuce greenhouses.

The entire Project site would be fenced with chain link apart from a wrought iron fence along Avenue K. Access would be provided from a driveway which is located off of 65th Street East. The driveway would be paved to the parking lot. A drain recycling basin, storm water basin, and three water tanks would be located on the western portion of the property. In addition, the loading dock area would be located on the eastern portion of the property connected to the support/office building.

**Location:** The Project site is approximately 80 acres located south of Avenue K and west of 65th Street East in the City of Lancaster, Los Angeles County. The site is identified by Assessor's Parcel Number (APN) 3386-007-007. The northern boundary of the Project site was formed by Avenue K. Active agricultural fields existed north of Avenue K. An old abandoned agricultural field existed west, northwest, and southeast of the study site. The east boundary of the study site is formed by 65th Street East, a dirt road. A house and inactive agricultural fields were present east of 65th Street East. Old agricultural fields and Little Rock Wash were present west of the study site. The southeastern boundary of the study site was formed by a dirt road.

## Comments and Recommendations

CDFW offers the following comments and recommendations below to assist the 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.

## Comments and Recommendations

### Comment #1: Impacts on Western Joshua Tree (*Yucca brevifolia*)

**Issue:** The MND indicates a western Joshua tree is located 25 feet south of the southern Project boundary.

**Specific impact:** Mitigation Measure 3 establishes a 25-foot buffer around the Joshua tree measured from the fullest extent of the drip line. While a buffer may be considered an avoidance measure, a buffer of 25 feet may still result in take of the seedbank.

**Why impact would occur:** Studies show that rodents could transport and cache western Joshua tree seeds as far as 290 feet from a western Joshua tree (Vander Wall et al. 2006). This indicates that Project activities 25 feet from the location of the Joshua tree may impact the

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seedbank, resulting in take. Moreover, Figure 2 in the Initial Study indicates paved roadways around the perimeter of the site. A roadway within 25 feet of the Joshua tree may cutoff the usual sheet flow and water availability flowing to the Joshua tree. Additionally, runoff coming from the roadway may be filled with pollutants that could flow directly to the Joshua tree and its seedbank. This may not only impact the persistence of tree itself but also the associated seedbank and the ability to germinate.

**Evidence impact would be significant:** The western Joshua tree is a species designated as candidate for listing as threatened pursuant to CESA (Fish & G. Code, § 2050 *et seq.*). The western Joshua tree is granted full protection of a threatened species under CESA. If take or adverse impacts to western Joshua trees cannot be avoided during Project activities or over the life of the Project, the Project applicant or proponent must consult CDFW to determine if a CESA Incidental Take Permit (ITP) is required (pursuant to Fish & Game Code, § 2080 *et seq.*).

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

**Mitigation Measure #1:** CDFW primarily recommends the City avoid impacts to western Joshua tree to the greatest extent feasible with a 290-foot buffer from the drip line of the Joshua tree.

**Mitigation Measure #2:** If “take” or adverse impacts to western Joshua tree or it’s seedbank cannot be avoided during any project activities or over the life of the Project, the City should apply for a CESA Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2080 *et seq.* Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required to obtain a CESA Permit. The City should consult with CDFW to obtain additional Joshua tree survey requirements. CDFW may require separate CEQA documentation for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

### **Comment #2: Impacts to Burrowing Owl (*Athene cunicularia*)**

**Issue:** The Project presents insufficient mitigation for impacts to burrowing owl.

**Specific impact:** The Project may remove burrowing owl foraging habitat by eliminating native vegetation that supports essential rodent, insect, and reptiles that are prey for burrowing owl. In addition, any rodent control activities could result in direct and secondary poisoning of burrowing owl ingesting treated rodents.

**Why impact would occur:** Mitigation Measure 3 covers focused surveys for the species as well as minimum actions that will be taken so no individuals are “taken” during Project activities. However, there is no compensatory mitigation for permanent impacts to their habitat. Without offsetting permanent impacts with compensatory mitigation, the Project may result in a net loss of occupied habitat.

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**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 the permanent loss of potentially suitable habitat. 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)).

### **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](#). Burrowing owl protocol surveys should be conducted on the Project site prior to the start of construction/ground disturbing activities that could result in habitat disturbance to soil, vegetation, or other sheltering habitat for burrowing owl in accordance with established burrowing owl protocols. 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. A qualified biologist should prepare a survey report summarizing methods and results. Survey results including negative findings, should be submitted to the City prior to construction/ground-disturbing activities. If burrowing owls are identified in the Project site during the surveys, the qualified biologist should contact CDFW to determine the appropriate mitigation/management requirements within three (3) days of the last survey. The qualified biologist should prepare a burrowing owl mitigation plan consistent with the Department of Fish and Game 2012 Staff Report on Burrowing Owl Mitigation. The applicant should submit a final Burrowing Owl Mitigation plan to the City and CDFW prior to commencing any construction/ground disturbing activities.

**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. 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.

**Mitigation Measure #3:** CDFW recommends that rodenticides and second-generation anticoagulant rodenticides be prohibited both during and over the life of the Project. Additional information on rodenticides can be found on CDFW’s [Rodenticides](#) webpage (CDFW 2021a).

### **Comment #3: Impacts to Drainages; Lake and Streambed Alteration Agreement (LSAA)**

**Issue:** The Project as proposed may impact ephemeral drainage and/or erosional features that may exist on site.

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**Specific Impact:** Grading of ephemeral washes and the installation of a drain recycling basin and storm water basin may reduce the availability and extent of water flow. Modifications to washes and installation of basin structures may result in temporary or permanent impacts to an ephemeral wash. There could be changes to the hydrologic regime both within the immediate area and downstream. Changes to the hydrologic regime could affect abiotic and biotic variables that support plants, fish, wildlife, and macroinvertebrates.

**Why Impact Would Occur:** The BRA states, "Relic ephemeral washes, including a large circular clay pan area, were observed on the aerial photography within the southern portion of the study area. Washes and the clay pan area observed within the study area during the field survey have been historically farmed as part of ongoing agricultural practices and are no longer viable as a functional water habitat." It is unclear what is considered a "functional water habitat" based on the BRA. However, Figure 7 of the BRA shows the location of the relic ephemeral washes and shows how vegetation is supported in these locations. Grading activity and basin installation may alter hydrologic and geomorphic processes, potentially impacting drainages on site and drainages located downstream of the Project. Such alterations may additionally impact biological resources, namely vegetation, that depend on those processes and water availability. Impacts to drainages may also occur outside of the Project boundary upstream where there is hydrologic connectivity.

**Evidence Impact Would Be Significant:** Changes to hydrology and channel morphology, both within the Project area and downstream, are reasonable potential direct and indirect physical changes in the environment. Said changes and their potential impacts on biological resources should be analyzed and disclosed in an environmental document. Adequate disclosure is necessary for CDFW to assist a lead agency in adequately identifying, avoiding, and/or mitigating a project's significant, or potentially significant, direct, and indirect impacts on biological resources.

Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

- Divert or obstruct the natural flow of any river, stream, or lake;
- Change the bed, channel, or bank of any river, stream, or lake;
- Use material from any river, stream, or lake; or
- Deposit or dispose of material into any river, stream, or lake.

The Project may adversely affect the existing hydrology pattern of the Project site. This may occur through the alteration of flows in stream, which absent specific mitigation, could result in substantial erosion or siltation on or off site of the Project. In addition, impacts to sensitive or rare riparian plant communities off site may occur. The Project may substantially adversely affect the existing stream pattern and geomorphologic processes of the Project site through the alteration of drainages on site. No jurisdictional delineation was conducted so it is unclear the extent or number of drainages that may be impacted as well as the habitat that exists downstream. 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.

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### **Recommended potentially feasible mitigation measure(s)**

**Mitigation Measure #1:** If avoidance of washes are not feasible, CDFW recommends the Project proponent notify CDFW pursuant under Fish and Game Code, section 1600 et seq. The Project applicant (or “entity”) must provide notification to CDFW pursuant to Fish and Game Code, section 1600 et seq. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration (LSA) Agreement with the applicant is required prior to conducting the proposed activities. Please visit CDFW’s [Lake and Streambed Alteration Program](#) webpage for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2021a).

**Mitigation Measure #2:** CDFW recommends the LSA Notification include a hydrology report to evaluate whether altering streams within the Project site may impact hydrologic activity within and downstream of the Project site. The hydrology report should also include an analysis to determine if Project activities will impact the current hydrologic regime or change the velocity of flows on site and downstream. CDFW also requests a hydrological evaluation of any potential scour or erosion at the Project site and downstream due to a 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions to determine how the Project activities may change the hydrology on site.

**Mitigation Measure #3:** CDFW recommends the Project implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into drainages during Project activities. CDFW recommends BMPs be monitored and repaired, if necessary, to ensure maximum erosion, sediment, and pollution control. The Project proponent should prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within stream areas. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site should be free of nonnative plant materials. Fiber rolls or erosion control mesh should be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.

**Recommendation:** CDFW’s issuance of an LSA Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the County for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, the CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement.

To compensate for any on- and off-site impacts to wetlands or riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures, avoidance of resources, protective measures for downstream resources, on- and/or off-site habitat creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity

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#### **Comment #4: Inadequate Disclosure of Adequacy of Biological Impact Fee**

**Issue:** The MND does not provide sufficient information for CDFW to evaluate the adequacy of the Biological Impact Fee to offset the cumulative loss of biological resources in the Antelope Valley.

**Specific Impacts:** The Project would grade approximately 80 acres. The Project would eliminate habitat that supports biological resources and could potentially support SSC.

**Why impacts would occur:** The Project's impacts on biological resources in the Antelope Valley would be mitigated through payment of a \$770/acre Biological Impact Fee. The Biological Impact Fee would "offset the cumulative loss of biological resources in the Antelope Valley as a result of development." The MND concludes that "no impacts would occur" with payment of the Biological Impact Fee. The MND does not explain or make a connection as to why payment of the Biological Impact Fee is adequate to offset Project impacts so that the Project would have no impacts. The MND does not discuss or provide the following information:

- 1) Whether the Biological Impact Fee is going towards an established program;
- 2) How that program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA;
- 3) What the Biological Impact Fee would acquire. It is unclear if the Biological Impact Fee would be used to acquire land for preservation, enhancement, and/or restoration purposes, or if the Biological Impact Fee would be used to purchase credits at a mitigation bank, or none of the above;
- 4) What biological resources would the Biological Impact Fee protect/conserve;
- 5) Why the Biological Impact Fee is appropriate for mitigating cumulative loss of biological resources in the Antelope Valley;
- 6) How \$770/acre is sufficient to purchase land or credits at a mitigation bank;
- 7) Where the City may acquire land or purchase credits at a mitigation bank so that the Biological Impact Fee would offset Project impacts on biological resources in the Antelope Valley;
- 8) When the City would use the Biological Impact Fee. Mitigation payment does not equate to mitigation if the funds are not being used. Also, temporal impacts on biological resources may occur as long as the City fails to implement its proposed mitigation;
- 9) How the City would commit to the Project to paying the Biological Impact Fee. For example, when would the City require payment from the Project applicant, how long would the Project applicant have to pay the fee, and what mechanisms would the City implement to ensure the fee is paid? Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines, § 15126.4).
- 10) What performance measures the proposed mitigation would achieve (CEQA Guidelines, § 15126.4);
- 11) What type(s) of potential action(s) that can feasibly achieve those performance standards (CEQA Guidelines, § 15126.4); and,
- 12) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.

**Evidence impacts would be significant:** The basic purpose of an environmental document is to provide public agencies and the public in general with detailed information about the effect a

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proposed project is likely to have on the environment, and ways and manners in which the significant effects of such a project might be minimized (Pub. Resources Code, §§ 21002.1, 21061). The MND is insufficient as an informational document because it fails to discuss the ways and manners in which the Biological Impact Fee would mitigate for the Project's impacts on biological resources in the Antelope Valley. Mitigation measures should be adequately discussed and the basis for setting a particular measure should be identified [CEQA Guidelines, § 15126.4(a)(1)(B)]. The MND does not provide enough information to facilitate meaningful public review and comment on the appropriateness of the City's Biological Impact Fee at mitigating for impacts on biological resources

This Project may have a significant effect on the environment because the Project may reduce habitat for rare plants or wildlife; cause rare plants or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; and substantially reduce the number or restrict the range of an endangered, rare, or threatened species [CEQA Guidelines, § 15065(a)(1)]. Furthermore, the Project may contribute to the ongoing loss of sensitive, special status, threatened, and/or endangered plants, wildlife, and vegetation communities in the Antelope Valley. The Project may have possible environmental effects that are cumulatively considerable [CEQA Guidelines, § 15065(a)(3)]. The City is acknowledging that the Project would contribute to the cumulative loss of biological resource in the Antelope Valley because the City is proposing a Biological Impact Fee as compensatory mitigation. The Biological Impact Fee may be inadequate mitigation absent commitment, specific performance standards, and actions to achieve performance standards. 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 in local or regional plans, policies, or regulations, or by CDFW or the U.S. Fish and Wildlife Service.

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

**Recommendation #1:** CDFW recommends the City update the MND to provide adequate, complete, and good-faith disclosure of information that would address the following in relation to the Project:

- 1) Whether the Biological Impact Fee is going towards an established program;
- 2) How the program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA;
- 3) What the Biological Impact Fee would acquire;
- 4) What biological resources would the Biological Impact Fee protect/conservate;
- 5) Why the Biological Impact Fee is appropriate for mitigating the cumulative loss of biological resources in the Antelope Valley;
- 6) Why the Biological Impact Fee is sufficient to purchase land or credits at a mitigation bank;
- 7) Where the City may acquire land or purchase credits at a mitigation bank;
- 8) When the City would use the Biological Impact Fee; and,
- 9) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.

The City should provide any technical data, maps, plot plans, diagrams, and similar relevant information in addressing these concerns (CEQA Guidelines, § 15147).



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**Recommendation #2:** CDFW recommends that the City provide a discussion describing how it intends to commit to mitigation via the Biological Impact Fee. For example, the City should provide specifics as to when would the City require payment from the Project applicant, how long would the Project applicant have to pay the fee, what mechanisms would the City implement to ensure the fee is paid, and when the City would use the Project's payment for mitigation. Also, the City should provide specific performance standards and actions to achieve those performance standards.

**Recommendation #3:** CDFW recommends that the City recirculate the MND for more meaningful public review and assessment of the City's Biological Impact Fee. Additionally, the City should recirculate the MND if the proposed mitigation measure (i.e., Biological Impact Fee) would not reduce potential effects to less than significant and new measures must be required [CEQA Guidelines, § 15073.5(b)(2)].

### Additional Recommendations

Swainson's Hawk (*Buteo swainsoni*): Mitigation Measure 6 of the MND, as written, may be insufficient to mitigate for potential impacts to Swainson's hawk. The MND acknowledged the potential for Swainson's hawk to occur within or near the Project site.

CDFW recommends the City amend this Mitigation Measure 6 to include the underlined language:

"A Swainson's hawk survey shall be conducted on the property and immediately surrounding areas following the 2010 guidance, *Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California*, and disclosing the results in the Project's environmental documentation to ensure that there are no active Swainson's hawk near the project site. In the event that an active Swainson's hawk nest is identified on or near the project site, a half mile buffer around the nest shall be established and the California Department of Fish and Wildlife shall be contacted to determine the appropriate mitigation/management measures. If "take" of Swainson's hawk would occur from Project construction or operation, CESA authorization [(i.e., incidental take permit (ITP))] would be required for the Project.

Permanent impacts to foraging habitat for Swainson's hawk shall be offset by setting aside replacement acreage to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity. This shall include an appropriate endowment to provide for the long-term management of mitigation lands. In the event of the presence of Swainson's hawk on site, CDFW recommends that the City require a Swainson's hawk mitigation plan be submitted to CDFW for review and comment prior to Project implementation."

Nesting Birds. The Project's proposed Mitigation Measure 5 may not be sufficient to mitigate for impacts to nesting birds. Project activities occurring during the bird and raptor breeding and nesting season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. CDFW recommends the City amend this Mitigation Measure to exclude the ~~strikethrough~~ and include the underlined language:

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“Ground-disturbing activities and vegetation removal associated with the proposed Project shall occur, to the extent feasible, outside of the combined breeding season of February 1 through September 15 (as early as January 1 for some raptors). If this is not feasible, a nesting bird survey shall be conducted within 30 days at appropriate nesting times and concentrate on potential roosting or perch sites. Surveys shall be conducted no more than 7 days prior to the start of construction/ground disturbing activities. If Project activities are delayed or suspended for more than 7 days during the breeding season, repeat surveys shall be repeated prior to the start of construction, the results of which must be submitted to the City for review and approval prior to initiating any construction activities. If nesting birds are encountered, all work shall cease until either the young birds have fledged or the appropriate permits are obtained from the California Department of Fish and Wildlife (CDFW). If active bird nests are identified using the Project site during the survey, the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. Impact to nests will be avoided by delay of work or establishing a buffer of 500 feet around active raptor nests and 50 300 feet around other migratory bird species nests.”

Data. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., California Natural Diversity Database (CNDDDB)] which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, CDFW recommends that the subsequent CEQA document include measures where lead agencies of individual projects tiering from the subsequent CEQA document report any special status species detected during preparation of project-level environmental impact analyses/environmental documents. Special status species information should be submitted to the CNDDDB by completing the [Online Field Survey Form](#) (CDFW 2021b). The lead agency should ensure all pertinent data has been properly submitted, with all applicable data fields filled out, prior to finalizing/adopting an environmental document. The lead agency should provide CDFW with confirmation of data submittal.

Entrapment. The Project may result in the use of open pipes used as fence posts, property line stakes, signs, etc. CDFW recommends that all hollow posts and pipes be capped to prevent wildlife entrapment and mortality because these structures mimic the natural cavities preferred by various bird species and other wildlife for shelter, nesting and roosting. Raptor’s talons can become entrapped within the bolt holes of metal fence stakes resulting in mortality. Metal fence stakes used on the Project site should be plugged with bolts or other plugging materials to avoid this hazard.

### **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).

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## Conclusion

We appreciate the opportunity to comment on the Project to assist the City 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 Felicia Silva, Environmental Scientist, at [Felicia.Silva@wildlife.ca.gov](mailto:Felicia.Silva@wildlife.ca.gov) or (562) 292-8105.

Sincerely,

DocuSigned by:



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Victoria Tang signing for

Erinn Wilson-Olgin  
Environmental Program Manager I  
South Coast Region

ec: CDFW

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## References

- [CDFW]. California Department of Fish and Wildlife. March 7, 2012. Staff Report on Burrowing Owl Mitigation (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>).
- [CDFW]. California Department of Fish and Wildlife June 2, 2010. Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (2010). (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>).
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- [CDFWb] California Department of Fish and Wildlife. 2021. Submitting Data to the CNDDb. Available from: <https://wildlife.ca.gov/Data/CNDDb/Submitting-Data>
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**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-Joshua tree</b>	The City shall avoid impacts to western Joshua tree to the greatest extent feasible with a 190-foot buffer from the drip line of the Joshua tree identified offsite.	During the life of the Project	Project proponent
<b>MM-BIO-2-Joshua tree</b>	If “take” or adverse impacts to western Joshua tree or it’s seedbank cannot be avoided during any project activities or over the life of the Project, the City shall apply for a CESA Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2080 <i>et seq.</i> Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required to obtain a CESA Permit. The City shall consult with CDFW to obtain additional Joshua tree survey requirements. CDFW may require separate CEQA documentation for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals shall be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.	Prior to project ground-disturbing activities	Project proponent
<b>MM-BIO-3-Burrowing Owl</b>	The Project shall adhere to CDFW’s March 7, 2012, <i>Staff Report on Burrowing Owl Mitigation</i> as referenced in the MND. 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	Prior to project ground-disturbing activities	Project proponent

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	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.		
<b>MM-BIO-4-Burrowing Owl</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, the City will require a burrowing owl mitigation plan be submitted to CDFW for review and comment prior to Project implementation. For proposed preservation and/or restoration, the final environmental document shall include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts.	Prior to project ground-disturbing activities	Project proponent
<b>MM-BIO-5-Burrowing Owl</b>	Rodenticides and second-generation anticoagulant rodenticides shall be prohibited both during and over the life of the Project. Additional information on rodenticides can be found on CDFW's <a href="#">Rodenticides</a> webpage (CDFW 2021a).	During the life of the Project	City of Lancaster Project Proponent
<b>MM-BIO-6-LSA</b>	If avoidance of washes are not feasible, the City shall notify CDFW pursuant under Fish and Game Code, section 1600 et seq. The Project applicant (or "entity") must provide notification to CDFW pursuant to Fish and Game Code, section 1600 et seq. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration (LSA) Agreement with the applicant is required prior to conducting the proposed activities.	Prior to project ground-disturbing activities	City of Lancaster Project Proponent
<b>MM-BIO-7-LSA</b>	The LSA Notification shall include a hydrology report to evaluate whether altering streams within the Project site may impact hydrologic activity within and downstream of the Project site. The hydrology report shall also include an analysis to determine if Project activities will impact the current hydrologic regime or change the velocity of flows on site and downstream. CDFW also requests a hydrological evaluation of any potential scour or erosion at the	Prior to project ground-disturbing activities	City of Lancaster Project Proponent

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	project site and downstream due to a 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions to determine how the Project activities may change the hydrology on site.		
<b>MM-BIO-8-LSA</b>	The Project shall implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into drainages during Project activities. CDFW recommends BMPs be monitored and repaired, if necessary, to ensure maximum erosion, sediment, and pollution control. The Project proponent shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within stream areas. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.	Prior to project ground-disturbing activities	City of Lancaster  Project Proponent
<b>REC-1-LSA</b>	CDFW's issuance of an LSA Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the County for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, the CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement.  To compensate for any on- and off-site impacts to wetlands or riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures, avoidance of resources, protective measures for	Prior to project ground-disturbing activities	City of Lancaster  Project Proponent

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	downstream resources, on- and/or off-site habitat creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity		
<b>REC-2-Biological Impact fee</b>	<p>CDFW recommends the City update the MND to provide adequate, complete, and good-faith disclosure of information that would address the following in relation to the Project:</p> <ol style="list-style-type: none"> <li>1) Whether the Biological Impact Fee is going towards an established program;</li> <li>2) How the program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA;</li> <li>3) What the Biological Impact Fee would acquire;</li> <li>4) What biological resources would the Biological Impact Fee protect/conservate;</li> <li>5) Why the Biological Impact Fee is appropriate for mitigating the cumulative loss of biological resources in the Antelope Valley;</li> <li>6) Why the Biological Impact Fee is sufficient to purchase land or credits at a mitigation bank;</li> <li>7) Where the City may acquire land or purchase credits at a mitigation bank;</li> <li>8) When the City would use the Biological Impact Fee; and,</li> <li>9) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.</li> </ol> <p>The City should provide any technical data, maps, plot plans, diagrams, and similar relevant information in addressing these concerns (CEQA Guidelines, § 15147).</p>	Prior to project ground-disturbing activities	City of Lancaster  Project Proponent
<b>REC-3- Biological Impact fee</b>	<p>CDFW recommends that the City provide a discussion describing how it intends to commit to mitigation via the Biological Impact Fee. For example, the City should provide specifics as to when would the City require payment from the project applicant, how long would the project applicant have to pay the fee, what mechanisms would the</p>	Prior to project ground-disturbing activities	City of Lancaster  Project Proponent

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	City implement to ensure the fee is paid, and when the City would use the Project's payment for mitigation. Also, the City should provide specific performance standards and actions to achieve those performance standards.		
<b>REC-4- Biological Impact fee</b>	CDFW recommends that the City recirculate the MND for more meaningful public review and assessment of the City's Biological Impact Fee. Additionally, the City should recirculate the MND if the proposed mitigation measure (i.e., Biological Impact Fee) would not reduce potential effects to less than significant and new measures must be required [CEQA Guidelines, § 15073.5(b)(2)].	Prior to project ground-disturbing activities	City of Lancaster  Project Proponent
<b>REC-5- Swainson's Hawk</b>	<p>CDFW recommends the City amend this Mitigation Measure 6 to include the <u>underlined</u> language:</p> <p>"A Swainson's hawk survey shall be conducted on the property and immediately surrounding areas <u>following the 2010 guidance, Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California, and disclosing the results in the Project's environmental documentation</u> to ensure that there are no active Swainson's hawk near the project site. In the event that an active Swainson's hawk nest is identified on or near the project site, a half mile buffer around the nest shall be established and the California Department of Fish and Wildlife shall be contacted to determine the appropriate mitigation/management measures. <u>If "take" of Swainson's hawk would occur from Project construction or operation, CESA authorization [(i.e., incidental take permit (ITP))] would be required for the Project.</u></p> <p><u>Permanent impacts to foraging habitat for Swainson's hawk should be offset by setting aside replacement acreage to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity. This should include an appropriate non-wasting endowment to provide for the long-term management of mitigation lands. In the event of the presence of</u></p>	Prior to project ground-disturbing activities	Project proponent



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	<u>Swainson’s hawk on site, CDFW recommends that the City require a Swainson’s hawk mitigation plan be submitted to CDFW for review and comment prior to Project implementation.”</u>		
<b>REC-4-Nesting Birds</b>	<p>CDFW recommends the City amend this Mitigation Measure to exclude the <del>strike through</del> and include the <u>underlined</u> language:</p> <p><u>“Ground-disturbing activities and vegetation removal associated with the proposed Project shall occur, to the extent feasible, outside of the combined breeding season of February 1 through September 15 (as early as January 1 for some raptors). If this is not feasible, a nesting bird survey shall be conducted within 30 days at appropriate nesting times and concentrate on potential roosting or perch sites. Surveys shall be conducted no more than 7 days prior to the start of construction/ground disturbing activities. If Project activities are delayed or suspended for more than 7 days during the breeding season, repeat surveys shall be repeated prior to the start of construction, the results of which must be submitted to the City for review and approval prior to initiating any construction activities. If nesting birds are encountered, all work shall cease until either the young birds have fledged or the appropriate permits are obtained from the California Department of Fish and Wildlife (CDFW). If active bird nests are identified using the project site during the survey, the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. Impact to nests will be avoided by delay of work or establishing a buffer of 500 feet around active raptor nests and 50 300 feet around other migratory bird species nests.”</u></p>	Prior to and during Construction	City of Lancaster Project Proponent
<b>REC-5-Data</b>	<p>CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., California Natural Diversity Database (CNDDDB)] which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, CDFW recommends that the subsequent CEQA document include measures where lead agencies of individual</p>	Prior to Construction	City of Lancaster Project Proponent

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	<p>projects tiering from the subsequent CEQA document report any special status species detected during preparation of project-level environmental impact analyses/environmental documents. Special status species information should be submitted to the CNDDDB by completing the <a href="#">Online Field Survey Form</a> (CDFW 2021c). The lead agency should ensure all pertinent data has been properly submitted, with all applicable data fields filled out, prior to finalizing/adopting an environmental document. The lead agency should provide CDFW with confirmation of data submittal.</p>		
<b>REC-6- Entrapment</b>	<p>CDFW recommends that all hollow posts and pipes be capped to prevent wildlife entrapment and mortality because these structures mimic the natural cavities preferred by various bird species and other wildlife for shelter, nesting and roosting. Raptor's talons can become entrapped within the bolt holes of metal fence stakes resulting in mortality. Metal fence stakes used on the Project site should be plugged with bolts or other plugging materials to avoid this hazard.</p>	<p>Prior to Construction</p>	<p>City of Lancaster Project Proponent</p>