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Apr 11 2022

STATE CLEARINGHOUSE

Via Electronic Mail Only

April 11, 2022

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**Subject: Draft Environmental Impact Report for Tentative Tract Map No. 83232,
SCH #2021090009, City of Lancaster, Los Angeles County**

Dear Ms. Campana:

The California Department of Fish and Wildlife (CDFW) has reviewed a Draft Environmental Impact Report (DEIR) from the City of Lancaster (City) for Tentative Tract Map No. 83232 (Project). CDFW appreciates the opportunity to provide comments regarding aspects of the Project that could affect fish and wildlife resources and be subject to CDFW's 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 & G. Code, §§ 711.7, subdivision (a) & 1802; Pub. 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 (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 *et seq.*). Likewise, to the extent implementation of the Project as proposed may result in "take", as defined by State law, of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, § 1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Cynthia Campana
City of Lancaster
April 11, 2022
Page 2 of 30

Project Description and Summary

Objective: The Project proposes to develop a 20-acre undeveloped parcel. The Project would subdivide the undeveloped parcel into 86 single family residential lots. The Project would also include construction of the following roads to provide vehicle access to the new homes:

- Extend 62nd Street West and Hampton Street to the south, and
- Construct new Street L, Street M, Street N, and a new Avenue K-12 cul-de-sac.

Lastly, the Project would extend the existing water and sewer lines that are available immediately north of the Project site to serve the new homes. The new utility lines would be buried under the new roadway segments.

The proposed new buried utilities and new/extended roads would be built first. Once that is complete, multiple homes would be built simultaneously per phase. It is expected 10 to 15 homes would be constructed per phase, with the estimated timeframe for constructing each home being six months. Therefore, the total construction period would last two to three years to build all 86 homes (with estimated project completion by the end of 2024).

Location: The Project is located at the northwest corner of 60th Street West and Avenue K-12. The Project is located on Assessor's Parcel Number 3204-008-048.

Comments and Recommendations

CDFW offers the 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. Editorial comments or other suggestions are also included to improve the environmental document. 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 (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

Specific Comments

Comment #1: Impacts on Swainson's Hawk

Issue: The Project may have a significant impact on Swainson's hawk (*Buteo swainsoni*), a CESA-listed species, both during Project construction and as a result of habitat loss.

Specific Impacts: Project construction and activities may disrupt natural Swainson's hawk breeding and nesting behavior, resulting in reduced reproductive capacity and loss of eggs and/or nestlings. Also, the Project may result in the permanent loss of 20 acres of foraging habitat for Swainson's hawk.

Why impacts would occur: According to page 10 of the 2018 Biological Resources Report, "a row of locus trees along the western border of the site may provide nesting opportunities for Swainson hawk." In the Antelope Valley, Swainson's hawks nest primarily in nonnative ornamental trees or trees planted as windbreaks (ICF 2019). Project construction would require ground-disturbance (e.g., grading, trenching, paving) and vegetation removal, both using heavy

Cynthia Campana
City of Lancaster
April 11, 2022
Page 3 of 30

equipment. These activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance. These activities occurring near potential Swainson's hawk nests could result in increased stress (needless energy expenditure), reduced reproductive capacity, and nest abandonment, all leading to potential loss of loss of fertile eggs or nestlings.

In addition, build out of the Project would result in permanent loss of 20 acres of potential foraging habitat for Swainson's hawk. The Project site is a former agricultural field that currently supports small mammals. The 2005 Biological Resources Report for the Project states "sign of seven species of mammal was found, including valley pocket gopher, California ground squirrel, and Merriam's kangaroo rat." Nesting pairs in the Antelope Valley primarily forage in the alfalfa fields and other agricultural areas in the region, as well as other desert scrub habitats that support a suitable prey base of small rodents (ICF 2019). Swainson's hawk is threatened by loss of nesting and foraging habitat as a result of agricultural shifts to crops that provide less suitable foraging habitat, urban development, environmental contaminants, and climate change (CDFW 2016; ICF 2019). The Project developing 20 acres of suitable Swainson's hawk foraging habitat would contribute to the cumulative and ongoing loss of habitat in the Antelope Valley.

Evidence impacts would be significant: Consistent with CEQA Guidelines section 15380, the status of Swainson's hawk as a threatened species under CESA qualifies it as an endangered, rare, or threatened species under CEQA. The Project would potentially contribute to the abandonment of an active nest and/or loss of significant foraging habitat for a given nest territory. This would result in take as defined under CESA. As to CESA, take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). However, the DEIR does not provide Swainson's hawk specific mitigation measures to avoid impacts on potential nests nor to offset the loss of 20 acres of habitat. Accordingly, the Project continues to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #1: Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an Incidental Take Permit for the Project unless the Project's CEQA document addresses all the Project's impact on CESA endangered, threatened, and/or candidate species. The Project's CEQA document should also specify a mitigation monitoring and reporting program that will meet the requirements of an Incidental Take Permit. It is important that the take proposed to be authorized by CDFW's Incidental Take Permit be described in detail in the Project's CEQA document. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an Incidental Take Permit. However, it is worth noting that mitigation for the Project's impact on a CESA endangered, threatened, and/or candidate species proposed in the Project's CEQA document may not necessarily satisfy mitigation required to obtain an Incidental Take Permit.

Mitigation Measure #1: The Project Applicant should retain a qualified botanist to survey the Project site and adjacent area for Swainson's hawks according to the [Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the](#)

Cynthia Campana
City of Lancaster
April 11, 2022
Page 4 of 30

[Antelope Valley of Los Angeles and Kern Counties, California](#) (CDFW 2010). The Project Applicant should submit a survey report, including negative findings, to the City and CDFW before the City issues a grading permit for the Project and any ground-disturbing activities and vegetation removal.

Mitigation Measure #2: If surveys locate a Swainson's hawk nest, nests should be fully avoided and no Project construction and activities should occur within ½ mile of an active nest between March 1 and September 15. No trees or vegetation should be removed between March 1 and September 15.

Mitigation Measure #3: If take or adverse impacts to Swainson's hawk cannot be avoided, the Project Applicant should consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & Game Code, § 2080 et seq). The Project Applicant should provide a copy of a fully executed take authorization before the City issues a grading permit for the Project and before any ground disturbance and vegetation removal.

Mitigation Measure #4: Permanent impacts to foraging habitat for Swainson's hawk should be offset by the Project Applicant. The Project Applicant should purchase 60 acres of preservation credits at mitigation bank offering credits for Swainson's hawk and whose service area contains the Project site. The Project Applicant should submit the credit amount, bank sponsor, habitat types(s), and map of the mitigation site to the City before the City issues a grading permit for the Project and before any ground-disturbing activities or vegetation removal.

Mitigation Measure #5: If credits at a mitigation bank are not available, the Project Applicant should acquire 60 acres of land to protect habitat for Swainson's hawk in perpetuity. Lands to be conserved should be selected in consistency with Conservation Actions for Swainson's hawk described in the Antelope Valley Regional Conservation Investment Strategy (ICF 2019).

The Project Applicant should protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012). The Project Applicant should record the conservation easement before the City issues a grading permit for the Project.

Assembly Bill 1094 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. An appropriate non-wasting endowment should be provided for the long-term management of mitigation lands. A mitigation plan should include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. Issues that should be addressed include but are not limited to the following: protection from any future development and zone changes; restrictions on access; proposed land dedications; control of illegal dumping; water pollution; and increased human intrusion.

Comment #2: Impacts on Burrowing Owl

Issue: The Project may continue to have a significant impact on burrowing owl (*Athene cunicularia*), a California Species of Special Concern (SSC), both during Project construction

Cynthia Campana
City of Lancaster
April 11, 2022
Page 5 of 30

and as a result of habitat loss.

Specific impacts: Project construction and activities may result in injury or mortality of burrowing owls, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Also, the Project may result in the permanent loss of 20 acres of breeding, wintering, and foraging habitat for the species. Habitat loss could result in local extirpation of the species and contribute to local, regional, and State-wide declines of the species.

Why impacts would occur: The Project site provides habitat for burrowing owl. According to page 9 of the Project's 2018 Biological Resources Report, "several regurgitated pellets of burrowing owl were found on a concrete cylinder along the southern property line". Project construction would require ground-disturbance (e.g., grading, trenching, paving) and vegetation removal, both using heavy equipment. These activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance. These activities occurring near potential wintering sites could flush burrowing owls, cause burrowing owls to abandon their burrow, and reduce the likelihood of winter survival. In addition, these activities occurring near potential nests could result in reduced reproductive capacity and cause burrowing owls to abandon their nests, resulting in the loss of fertile eggs or nestlings. Project-related impacts on burrowing owl during the wintering and breeding seasons, which includes potential populations in undeveloped land adjacent to the Project site, could cause local burrowing owl declines because of increased burrowing owl mortalities due to increased stress and injury, reproductive suppression, and loss of young.

Furthermore, build out of the Project would result permanent loss and degradation of 20 acres of breeding, wintering, and foraging habitat for burrowing owl. In the Antelope Valley burrowing owl populations have experienced dramatic declines due to widespread habitat loss and habitat fragmentation, resulting from the conversion of grassland and desert scrub habitat to urban and suburban areas (e.g., expanding residential grown, solar) (ICF 2019). Habitat loss can result in the elimination of individuals or populations of burrowing owls from the area that is converted, and burrowing owl can also be affected by proximity to converted lands from pollution and trampling (ICF 2019). Loss of 20 acres of potential habitat for burrowing owl could result in local extirpation of the species and contribute to local, regional, and State-wide declines of the species.

The DEIR provides mitigation for the Project's impact on burrowing owl, which states the following:

2. Burrowing Owl Protocol Surveys
3. Passive Relocation Program by Qualified Biologist
4. Burrowing Owl Exclusion and Mitigation Plan and Mitigation Land Management Plan
5. Nesting Bird Survey"

These mitigation measures as they are currently written are not sufficiently detailed for CDFW to make an informed decision whether these mitigation measures would be effective. These mitigation measures do not provide any information for CDFW to determine what actions would be taken and how those actions would mitigate for the Project's impact on burrowing owls. These mitigation measures do not demonstrate how mitigation would be carried out by the Project Applicant and enforced by the City. The DEIR does not provide specific information for any of these mitigation measures, such as when each mitigation measure would be

Cynthia Campana
City of Lancaster
April 11, 2022
Page 6 of 30

implemented, who would conduct the surveys and relocation, where and how burrowing owls would be relocated, where mitigation would occur, and why mitigation lands would be appropriate for burrowing owl. Without identifying and disclosing mitigation measures for burrowing owl, the DEIR does not provide any findings nor substantial evidence that the Project's impact on burrowing owl has been mitigated to a less than significant level.

Evidence impacts would be significant: A [California Species of Special Concern](#) is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as Endangered Species Act, but not CESA, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or,
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2022a).

CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Therefore, take of SSC could require a mandatory finding of significance (CEQA Guidelines, § 15065). Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated, through appropriate disclosure of the proposed mitigation measures, below a level of significance.

Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #2: The City should revise the Project's CEQA document to provide information that mitigation measures for burrowing owls would be effective to reduce impacts on burrowing owl to less than significant. In addition, the City should provide information on performance standards and potential action(s) associated with each mitigation measure for burrowing owl.

Mitigation Measure #6: CDFW recommends the City expand on Mitigation Measure #2 by incorporating the following language:

"Updated burrowing owl protocol surveys shall be conducted on the Project site and within 150 meters from the Project site in accordance with the procedures established by the California Department of Fish and Wildlife March 7, 2012, Staff Report on Burrowing Owl Mitigation. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between February 15 to 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 15 June. Protocol-level surveys and a report of findings, including

Cynthia Campana
City of Lancaster
April 11, 2022
Page 7 of 30

negative findings, shall be provided to the City before the City issues a grading permit for the Project and before the start of construction/ground disturbing activities.

If burrowing owls are identified using the project site, the Project Applicant shall contact the California Department of Fish and Wildlife (CDFW) to determine the appropriate mitigation/management requirements. The Project Applicant shall develop a Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. At a minimum, the following shall be followed: If burrowing owls are detected on site, no ground-disturbing activities, such as vegetation clearance or grading, shall be permitted within a buffer of no fewer than 500 meters from an occupied burrow during the breeding season (February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 165 feet from the burrow. Depending on the level disturbance, a smaller buffer may be established in consultation with CDFW.

The Project Applicant shall submit a final Burrowing Owl Mitigation Plan to CDFW and the City before the City issues a grading permit for the Project. The Project Applicant shall implement all measures identified in the Burrowing Owl Mitigation Plan.”

Mitigation Measure #7: The Project Applicant should acquire 40 acres of land to protect habitat for burrowing owl in perpetuity. To be consistent with Conservation Actions for Burrowing Owl described in the Antelope Valley Regional Conservation Investment Strategy (ICF 2019), the Project Applicant should acquire mitigation lands that (1) support documented burrowing owl nests, (2) are contiguous with existing protected habitat, and (3) are within the Antelope Valley.

The Project Applicant should protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands. The Project Applicant should record the conservation easement before the City issues a grading permit for the Project and before any ground-disturbing activities or vegetation removal.

Mitigation Measure #8: No rodenticides and second-generation anticoagulant rodenticides should be used during Project construction and for the lifetime of the Project.

Comment #3: Impacts on Streams

Issue: The Project may impact a stream and a freshwater pond.

Specific impacts: A stream and a freshwater pond could be impacted by soil erosion and vegetation removal during Project construction. In addition, new homes, roads, and impervious surfaces proposed by the Project could have a permanent impact on the adjacent stream. Finally, the Project would result in complete loss of the freshwater pond because the freshwater pond would be developed with single family homes.

Why impacts would occur: According to U.S. Fish and Wildlife Service’s (USFWS) National Wetland Inventory, there is a stream on the Project’s west boundary and a freshwater pond on the Project’s southeast corner (USFWS 2022). The presence of the stream is confirmed in the Project’s 2018 Biological Resources Report which states, “a small drainage runs along 60th

Cynthia Campana
City of Lancaster
April 11, 2022
Page 8 of 30

Street West; this feature supports mostly exotic herbaceous vegetation.” Moreover, the presence of salt cedar (*Tamarix ramosissima*), a species that quickly invades riparian areas, could be indicative of shallow water table. The 2018 Biological Resources Report states that “no other surface water is found on the site.” Since the Biological Resources Report was based on field surveys in September 2018, which was during the dry season, standing water would have been unlikely. Therefore, a freshwater pond could still be present on the Project site based on the National Wetland Inventory and the topography of the Project’s southeastern corner, which is consistent with a feature that could hold surface water.

The stream and freshwater pond could be impacted both during the Project and after the Project is completed. First, the Project would result in complete loss of the freshwater pond. The freshwater pond would be developed with single family homes as shown in Figure 2 on page 4 of Appendix A of the DEIR. Development of the freshwater pond would also result in loss of vegetation. The DEIR does not disclose or discuss what type of vegetation (i.e., natural community) would be permanently loss.

Project construction may include site preparation, which may require ground disturbance and vegetation removal with heavy equipment. Page B-3 of the DEIR states, “the proposed new buried utilities and new/extended roads would be built first. This would involve minor grading and trenching, followed by installing new utility lines, backfilling, and paving the roads.” These ground-disturbing activities could result in soil erosion and earth movement. As a result, the Project could deposit materials, such as sediment and fine particles, into a stream. In addition, ground-disturbing activities adjacent to the stream could impact the bed, bank, and channel. Furthermore, the Project would require concrete pouring and paving for the foundation of the new development. Where this occurs adjacent to the stream, concrete entering the stream would result in the Project depositing materials into a stream. The Project’s potential to cause the impacts discussed are likely to occur because the DEIR does not provide any measures to avoid impacting the stream during Project construction.

Even after Project construction, the Project could continue to have an impact on the stream as a result of new homes, roads, and impervious surfaces. New homes on the Project’s west boundary would be approximately less than 30 feet from the stream. 62nd Street West would be approximately less than 200 feet from the stream. New homes and a block wall adjacent to the stream could alter water conveyance and sediment transport. As a result, the Project could alter the stream’s course of flow compared to baseline conditions (i.e., pre-Project). Page 38 of the Initial Study in Appendix B of the DEIR states, “development of the proposed project would increase the amount of surface runoff as a result of impervious surfaces associated with grading of the site.” Roads and impervious surfaces could also impact the adjacent stream by altering how surface flows, sediment, and debris is transported across the Project site and potentially into the stream.

Evidence impacts would be significant: CDFW exercises its regulatory authority as provided by Fish and Game Code section 1600 et seq. to conserve fish and wildlife resources which includes rivers, streams, or lakes and associated natural communities. 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:

Cynthia Campana
City of Lancaster
April 11, 2022
Page 9 of 30

- Divert or obstruct the natural flow of any river, stream, or lake¹;
- 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.

CDFW requires a Lake and Streambed Alteration (LSA) Agreement when a project activity may substantially adversely affect fish and wildlife resources.

The Project may result in significant impacts on streams both during Project construction and for the Project's lifetime. The DEIR does not provide measures to mitigate for potentially significant impacts on streams. Accordingly, the Project has a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on fish and wildlife resources, including rivers, streams, or lakes and associated natural communities identified by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #3: 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 lead agency/project applicant for the project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, a project's 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 aquatic and 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.

Mitigation Measure #9: The Project Applicant should notify CDFW pursuant to Fish and Game Code 1602. The Project Applicant should submit proof that CDFW was notified before the City issues a grading permit for the Project. If a LSA Agreement is needed for the Project, the Project Applicant should obtain a LSA Agreement from CDFW and provide a copy of the LSA Agreement before the City issues a grading permit for the Project and before any ground disturbance and vegetation removal.

Please visit CDFW's [Lake and Streambed Alteration Program](#) webpage for more information (CDFW 2022b).

Mitigation Measure #10: The Project Applicant's notification to CDFW should provide the following information:

¹ "Any river, stream, or lake" includes those that are dry for periods of time (ephemeral/episodic) as well as those that flow year-round (perennial). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a water body.

Cynthia Campana
City of Lancaster
April 11, 2022
Page 10 of 30

- 1) A stream delineation in accordant with the USFWS wetland definition adopted by CDFW² (Cowardin et al. 1979);
- 2) Linear feet and/or acreage of streams and associated plant communities that would be permanently and/or temporarily impacted by the Project. Plant community names should be provided based on vegetation association and/or alliance per the [Manual of California Vegetation](#), second edition (Sawyer et al. 2009);
- 3) A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation should be discussed; and,
- 4) A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site. Additionally, the hydrological evaluation should assess a sufficient range of storm events (e.g., 100, 50, 25, 10, 5, and 2-year frequency storm events) to evaluate water and sediment transport under pre-Project and post-Project conditions.

Mitigation Measure #11: If a LSA Agreement is needed for the Project, the Project Applicant should comply with the mitigation measures detailed in the LSA Agreement issued by CDFW. The Project Applicant should also provide compensatory mitigation for impacts on streams at no less than 2:1 for the impacted stream and habitat acreage, or at a ratio acceptable to CDFW.

Comment #4: Impacts on Rare Plants

Issue: The Project may impact rare plants.

Specific Impacts: The Project could result in loss of individuals and populations of rare plants including (but not limited to) the following species:

- white pygmy poppy (*Canbya candida*) – California Rare Plant Rank (CRPR) 4.2
- Parry's spineflower (*Chorizanthe parryi* var. *parryi*) – CRPR 1B.1
- desert cymopterus (*Cymopterus deserticola*) - CRPR 1B.2

Why impacts would occur: The Project's 2018 Biological Resources Report summarizes findings of field surveys conducted on September 19 and 20. The Biological Resources Report concluded that there is suitable habitat to support white pygmy poppy, Parry's spineflower, and desert cymopterus. These species would only be detectable in the spring through early summer. The field surveys were not conducted at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting (Table 1, CDFW 2018). The field surveys would likely have been too late in the growing season to observe rare plant flowers and fruits if they occur in the Project site (Table 1). Therefore, the field surveys are insufficient evidence for the City to conclude that rare plants are not present and therefore no mitigation is required.

² Be advised that some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' Section 404 permit and Regional Water Quality Control Board Section 401 Certification.

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 11 of 30

Table 1. Bloom period (highlighted in grey) for rare plant species that could occur in the Project site (Calflora 2022).

Scientific name	Common name	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
<i>Canbya candida</i>	white pygmypoppy												
<i>Chorizanthe parryi</i> var. <i>parryi</i>	Parry's spineflower												
<i>Cymopterus deserticola</i>	desert cymopterus												

Field surveys conducted in a time of year inadequate to detect rare plants could be erroneous or inaccurate evidence for the City to conclude that the Project would not have a significant impact on rare plants and habitat supporting rare plants. The DEIR does not require the Project Applicant to perform a spring-time rare plant survey before Project activities even though this was recommended in the 2018 Biological Resources Report. Botanical field surveys are necessary to provide information on the Project's potential impacts on rare, sensitive, and special status plants. Project construction and activities proceeding based on false-negative surveys may result in the Project having an impact on rare plants. Rare plants and seedbank could be buried, crushed, and trampled. The Project may result in permanent loss of rare plants and its seedbank by developing 20 acres of habitat. The Project's potential impact on rare plants may result in local population declines or extirpation of a species.

Evidence impacts would be significant: Impacts on rare flora could be considered a significant effect on the environment. Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most of the plants that are ranked 1B have declined significantly over the last century (CNPS 2022). The additional threat rank of 0.1 indicates a species with over 80 percent of its occurrences threatened in California. The additional threat rank of 0.2 indicates a species with 20 to 80 percent of its occurrences threatened (CNPS 2022). Impacts to CRPR 1B plant species and their habitat meet the definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Some CRPR 3 and 4 species meet the definitions of endangered, rare, or threatened under CEQA. Impacts to CRPR 1B plant species and their habitat may result in a mandatory finding of significance because the Project would have the potential to threaten to eliminate a plant community and substantially reduce the number or restrict the range of an endangered, rare, or threatened species (CEQA Guidelines, § 15065).

The DEIR does not provide mitigation for the Project's potential impact on rare plants. Insufficient mitigation may result in unmitigated temporal or permanent impacts to a rare plant species. Subsequently, the Project continues to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #12: The Project Applicant should retain a qualified botanist with experience surveying for southern California rare plants to survey the Project site and adjacent areas for rare plants. Surveys should be conducted according to CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities](#) (CDFW 2018). The Project Applicant should submit a survey report, including negative findings, to the City before the City issues a grading permit for the Project

Cynthia Campana
City of Lancaster
April 11, 2022
Page 12 of 30

and any ground-disturbing activities and vegetation removal. At a minimum, the survey report should provide the following information:

- 1) A description and map of the survey area;
- 2) Field survey conditions that should include name(s) of qualified botanists(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals, and species searched;
- 3) If rare plants are found, a map(s) showing the location of individual plants or populations, and number of plants or density of plants per square feet occurring at each location. The map should distinguish between species found and which plants/populations will be avoided versus impacted by Project construction and activities that would require mitigation;
- 4) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each rare plant or population is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species); and,
- 5) If rare plants are found, species-specific measures to mitigate for impacts to rare plants and habitat (see Mitigation Measure #13).

Mitigation Measure #13: If impacts on CRPR 1 species and habitat cannot be avoided, the Project Applicant should provide compensatory mitigation at no less than 2:1. The abundance of a rare plant species and total habitat acreage within the mitigation lands should be no less than 2:1. Mitigation lands should be in the same watershed as the Project site and support habitat that contains the rare plant species impacted. The Project Applicant should protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity. The Project Applicant should submit proposed replacement habitat for CDFW review prior to purchasing and recording the conservation easement. The Project Applicant should record the conservation easement before the City issues the Project Applicant grading permit.

Comment #5: Impacts on Nesting Birds

Issue: The Project may continue to have a significant impact on nesting birds.

Specific impacts: Project construction during the nesting bird season could cause nesting birds to abandon their nests and decrease in feeding frequency. This could result in loss of fertile eggs and nestlings. In addition, the Project could result in loss of nesting habitat.

Why impacts would occur: According to the Project's 2018 Biological Resources Report, trees along the western border of the Provide site may provide nesting habitat for birds and raptors. Birds and raptors that may use these trees include loggerhead shrike (*Lanius ludovicianus*) and Cooper's hawk (*Accipiter cooperii*), the latter of which was "flushed from trees on the western border of the project site [during field surveys]." Project construction would create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance. These activities occurring near potential nests could cause birds to abandon their nests and a decrease in feeding frequency, both resulting in the loss of fertile eggs or nestlings. Accordingly,

Cynthia Campana
City of Lancaster
April 11, 2022
Page 13 of 30

nesting birds and raptors would be impacted. In addition, removing those trees would eliminate potential nesting habitat for birds and raptors.

The DEIR provides mitigation for nesting birds. However, the Project's mitigation measure for nesting birds may be inadequate to reduce the Project's impact on nesting birds to less than significant. The Project's mitigation measure for nesting bird states "5. Nesting Bird Survey." The purpose of a nesting bird survey is to determine the presence or absence of nesting birds. A survey alone is not any action that would physically protect nests, eggs, and nestlings. The DEIR does not discuss why a "Nesting Bird Survey" is adequate to reduce the Project's impact on nesting birds to less than significant. The DEIR does not provide information on the specifics of a "Nesting Bird Survey" such as timing, who would conduct the nesting bird survey, and the survey area. The mitigation measure as it is currently written, as well as the DEIR, do not provide any information for CDFW to determine what effective actions would be required of the Project Applicant to protect nesting birds and avoid impacts on nests, eggs, and nestlings if a nesting bird(s) is found on site. For these reasons, the mitigation measure as proposed may continue to result in significant impacts to nesting birds.

Evidence impact would be significant: The Project could impact nesting birds and raptors, including birds that are SSC. Nests of all birds and raptors are protected under State laws and regulations, including Fish and Game Code, sections 3503 and 3503.5. Fish and Game Code section 3503 states, "It is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird." Fish and Game code section 3503.5 prohibits the take, possession, or destruction of birds-of-prey and their nests or eggs. Also, take or possession of migratory nongame birds designated in the Federal Migratory Bird Treaty Act of 1918 is prohibited under Fish and Game Code section 3513. Finally, please be advised that CDFW does not issue permits for take of bird and raptor nests, eggs, or nestlings.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the City expand on Mitigation Measure #5 by incorporating the following four mitigation measures:

Mitigation Measure #14: To protect nesting birds that may occur within and in areas adjacent to the Project site, Project construction should occur between September 1 through January 31, outside of the nesting bird season the greatest extent possible. The Project Applicant should not remove or disturb trees or vegetation during the bird nesting season, which generally runs from February 15 through September 15 (as early as January 1 for some raptors) to avoid take of birds, raptors, or their nests, eggs, or nestlings.

Mitigation Measure #15: If Project construction and activities must occur during the bird nesting season, the Project Applicant should retain a qualified biologist to conduct a nesting bird survey. The qualified biologist should conduct a nesting bird survey no more than 7 days prior to the beginning of any ground-disturbance and vegetation removal. The qualified biologist should survey all potential nesting, roosting, and perching sites within a minimum 500-foot radius from the Project site. If Project construction and activities are delayed or suspended for more than 7 days during the nesting bird season, a qualified biologist should repeat nesting bird surveys before any activities can recommence.

A qualified biologist should conduct nesting bird surveys before starting Project construction and activities each year over the Project's anticipated construction period of 2 to 3 years.

Cynthia Campana
City of Lancaster
April 11, 2022
Page 14 of 30

Mitigation Measure #16: If nesting birds are identified, the qualified biologist should establish a no-disturbance buffer of a minimum of 500 feet around active nests. No-disturbance buffers should be increased, if necessary, to protect the nesting birds. No-disturbance buffers should be maintained until the breeding season has ended or until a qualified biologist determines that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Mitigation Measure #17: The Project Applicant should protect all vegetation and established trees on the Project's west boundary in order to retain these vegetation and trees for nesting birds and raptors. Impacts on the critical root zone of trees should be avoided. The Project Applicant should submit a Tree Protection Plan to the City before the City issues a grading permit for the Project and before any ground disturbance and vegetation removal.

Comment #6: Inadequate Disclosure of Adequacy of Biological Impact Fee

Issue: The City consistently relies on a \$770/acre Biological Impact Fee to offset the cumulative loss of biological resources in the Antelope Valley as a result of development projects. It is unclear if the City would require the Project Applicant to pay a Biological Impact Fee because this was not discussed in the DEIR.

Specific Impacts: The Project would develop approximately 20 acres of undeveloped land. This would result in permanent loss of habitat supporting burrowing owls, Swainson's hawk, and nesting birds, and potentially supporting rare plants.

Why impacts would occur: According to page 23 in the Initial Study in Appendix B, the Project's cumulative 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 Initial Study concludes that "no impacts would occur" with payment of the Biological Impact Fee. Neither the Initial Study nor DEIR explains why payment of the Biological Impact Fee is adequate to offset Project impacts so that the Project would not have a cumulative impact on biological resources in the Antelope Valley. The DEIR 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

Cynthia Campana
City of Lancaster
April 11, 2022
Page 15 of 30

- resources may occur as long as the City fails to implement its proposed mitigation;
- 9) How the City would commit 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 the Project would not have a cumulative impact on biological resources in the Antelope Valley.

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 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 DEIR 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 cumulative 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 DEIR does not provide enough information to facilitate meaningful public review and comment on the appropriateness of the 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 natural 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. Mitigation through payment of the Biological Impact Fee may not comply with the rules for acceptable deferred mitigation because the mitigation measure would not (1) adopt specific performance standards the mitigation will achieve, (2) identify the type(s) of potential action(s) that can feasibly achieve that performance standard that will be considered, analyzed, and potentially incorporated in the mitigation measures, and (3) be fully enforceable through permit conditions, agreements, or other legally-binding instruments (CEQA Guidelines, § 15126.4).

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 USFWS.

Cynthia Campana
City of Lancaster
April 11, 2022
Page 16 of 30

Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #4: The City should revise the Project's CEQA document to clarify whether the Biological Impact Fee is being proposed as mitigation for the Project's significant impacts on biological resources. In addition, the Project's CEQA document should address the following in relation to the Project:

- 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;
- 4) What biological resources would the Biological Impact Fee protect/conserves;
- 5) Why the Biological Impact Fee is appropriate for mitigating cumulative loss of biological resources in the Antelope Valley;
- 6) Why \$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;
- 9) How the City would commit the Project to paying the Biological Impact Fee;
- 10) What performance measures the proposed mitigation would achieve;
- 11) What type(s) of potential action(s) that can feasibly achieve those performance standards; and,
- 12) How the Biological Impact Fee would be adequate such that the Project would not have a cumulative impact on biological resources in the Antelope Valley.

Additional Recommendations

Recommendation #5: An EIR "shall identify and focus on the significant effects of the proposed project on the environment." "Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." (CEQA Guidelines, § 15126.2). Finally, the City in approving the Project, "must make findings on whether the adverse environmental effects have been substantially reduced or if not, why not" (CEQA Guidelines, § 15002(g)).

CDFW recommends the City revise the Project's CEQA document to provide a discussion (i.e., Biological Resources chapter) of the Project's impact on biological resources and the adequacy of mitigation measures to reduce the Project's impact to less than significant. In addition, the City should provide a thorough cumulative impact discussion of the Project's effects on similar plant and wildlife species, habitat, and natural communities at a local level (City of Lancaster) and regional level (Antelope Valley). If the City determines that the Project would not have a cumulative impact, the Project's CEQA document should indicate why the cumulative impact is not significant. The City's determination should be supported by facts and analyses [CEQA Guidelines, § 15130(a)(2)].

Recommendation #6: Natural communities, alliances, and associations with a State-wide ranking of S1, S2, and S3 should be considered Sensitive Natural Communities and declining at the local, regional, or State level. These ranks can be obtained by visiting [Vegetation Classification and Mapping Program - Natural Communities](#) webpage (CDFW 2022c). CDFW

Cynthia Campana
City of Lancaster
April 11, 2022
Page 17 of 30

considers Sensitive Natural Communities to meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). The presence of and the Project's impact on Sensitive Natural Communities should be addressed during CEQA. Furthermore, an EIR should evaluate a project's potential impact on plant communities [CEQA Guidelines, § 15065(a)(1)]. Finally, an EIR "must include a description of the physical environmental conditions in the vicinity of the project...Special emphasis should be placed on environmental resources that are rare or unique to the region that would be affected by the project" (CEQA Guidelines, § 15125).

CDFW recommends the City revise the Project's CEQA document and provide a discussion of the Project's potential impact on natural communities and Sensitive Natural Communities. The City should provide a map of natural communities and Sensitive Natural Communities within and adjacent to the Project site. A map should show natural community alliances and/or associates according to the [Manual of California Vegetation](#) (MCV), second edition (Sawyer et al. 2009). The map should also be prepared in accordance with CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities](#) (CDFW 2018). The CEQA document should provide the State-wide ranking of each natural community identified.

Recommendation #7: The Project would require significant ground and soil disturbance. Wildlife may be trapped or crushed by large equipment during Project construction. Accordingly, the Project Applicant should have a qualified biologist on site to prevent injury and mortality of wildlife of low mobility. Wildlife should be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site (at least 200 feet off site). A qualified biologist should be on site daily during initial ground and habitat disturbing activities and vegetation removal.

Recommendation #8: CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., CNDDDB] which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Information on special status species should be submitted to the CNDDDB by completing and submitting [CNDDDB Field Survey Forms](#) (CDFW 2022d). Information on special status native plant populations and sensitive natural communities, the [Combined Rapid Assessment and Relevé Form](#) should be completed and submitted to CDFW's Vegetation Classification and Mapping Program (CDFW 2021e).

Recommendation #9: CDFW recommends the City update the Project's proposed Biological Resources Mitigation Measures and condition the environmental document to include mitigation measures recommended in this letter. CDFW provides comments to assist the City in developing mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment A).

Cynthia Campana
City of Lancaster
April 11, 2022
Page 18 of 30

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 City of Lancaster and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying Project approval to be operative, vested, and final (Cal. Code Regs., tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

Conclusion

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 of Lancaster 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 Ruby Kwan-Davis, Senior Environmental Scientist (Specialist), at Ruby.Kwan-Davis@wildlife.ca.gov or (562) 619-2230.

Sincerely,

DocuSigned by:

Steve Gibson

614D9A782D93439...

Steve Gibson signing for

Erinn Wilson-Olgin
Environmental Program Manager I
South Coast Region

ec: CDFW

Erinn Wilson-Olgin, Los Alamitos – Erinn.Wilson-Olgin@wildlife.ca.gov

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CEQA Program Coordinator, Sacramento – CEQACommentLetters@wildlife.ca.gov

State Clearinghouse, Office of Planning and Research – State.Clearinghouse@opr.ca.gov

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Cynthia Campana
City of Lancaster
April 11, 2022
Page 19 of 30

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State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Attachment A: Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		Timing	Responsible Party
REC-1- Swainson's Hawk	Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an Incidental Take Permit for the Project unless the Project's CEQA document addresses all the Project's impact on CESA endangered, threatened, and/or candidate species. The Project's CEQA document should also specify a mitigation monitoring and reporting program that will meet the requirements of an Incidental Take Permit. It is important that the take proposed to be authorized by CDFW's Incidental Take Permit be described in detail in the Project's CEQA document. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an Incidental Take Permit. However, it is worth noting that mitigation for the Project's impact on a CESA endangered, threatened, and/or candidate species proposed in the Project's CEQA document may not necessarily satisfy mitigation required to obtain an Incidental Take Permit.	Prior to finalizing CEQA document	City of Lancaster (City)
REC-2- Burrowing Owl	The City should revise the Project's CEQA document to provide information that mitigation measures for burrowing owls would be effective to reduce impacts on burrowing owl to less than significant. In addition, the City should provide information on performance standards and potential action(s) associated with each mitigation measure for burrowing owl.	Prior to finalizing CEQA document	City
REC-3-Lake and Streambed	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	Prior to finalizing	City

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 21 of 30

<p>Alteration Agreement</p>	<p>consider the CEQA document from the lead agency/project applicant for the project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, a project's 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.</p>	<p>CEQA document</p>	
<p>REC-4- Biological Impact Fee</p>	<p>The City should revise the Project's CEQA document to clarify whether the Biological Impact Fee is being proposed as mitigation for the Project's significant impacts on biological resources described. In addition, the Project's CEQA document should address the following in relation to the Project:</p> <ol style="list-style-type: none"> 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; 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) Why \$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; 9) How the City would commit the Project to paying the Biological Impact Fee; 10) What performance measures the proposed mitigation would achieve; 11) What type(s) of potential action(s) that can feasibly achieve those performance standards; and, 	<p>Prior to finalizing CEQA document</p>	<p>City</p>

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 22 of 30

	12) How the Biological Impact Fee would be adequate such that the Project would not have a cumulative impact on biological resources in the Antelope Valley.		
REC-5-Discuss the Project's Significant Impacts on Biological Resources	The City should revise the Project's CEQA document to provide a discussion (i.e., Biological Resources chapter) of the Project's impact on biological resources and the adequacy of mitigation measures to reduce the Project's impact to less than significant. In addition, the City should provide a thorough cumulative impact discussion of the Project's effects on similar plant and wildlife species, habitat, and natural communities at a local level (City of Lancaster) and regional level (Antelope Valley). If the City determines that the Project would not have a cumulative impact, the Project's CEQA document should indicate why the cumulative impact is not significant. The City's determination should be supported by facts and analyses.	Prior to finalizing CEQA document	City
REC-6-Discuss the Project's Significant Impacts on Natural Communities	The City should revise the Project's CEQA document and provide a discussion of the Project's potential impact on natural communities and Sensitive Natural Communities. The City should provide a map of natural communities and Sensitive Natural Communities within and adjacent to the Project site. A map should show natural community alliances and/or associates according to the Manual of California Vegetation (MCV), second edition. The map should also be prepared in accordance with CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities . The CEQA document should provide the State-wide ranking of each natural community identified.	Prior to finalizing CEQA document	City
REC-7-Qualified Biologist On Site	The Project Applicant should have a qualified biologist on site to prevent injury and mortality of wildlife of low mobility. Wildlife should be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site (at least 200 feet off site). A qualified biologist should be on site daily during initial ground and habitat disturbing activities and vegetation removal.	During initial ground and habitat disturbing activities and vegetation removal	Royal Investors Group, LLC

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 23 of 30

REC-8-Submitting Data for Sensitive and Special Status Species and Natural Communities	CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., CNDDDB] which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Information on special status species should be submitted to the CNDDDB by completing and submitting CNDDDB Field Survey Forms . Information on special status native plant populations and sensitive natural communities, the Combined Rapid Assessment and Relevé Form should be completed and submitted to CDFW's Vegetation Classification and Mapping Program.	Prior to finalizing CEQA document	City
REC-9-Mitigation and Monitoring Reporting Plan	The City should update the Project's proposed Biological Resources Mitigation Measures and condition the environmental document to include mitigation measures recommended in this letter.	Prior to finalizing CEQA document	City
MM-BIO-1-Impacts on Swainson's Hawk-Surveys	The Project Applicant shall retain a qualified botanist to survey the Project site and adjacent area for Swainson's hawks according to the 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 . The Project Applicant shall submit a survey report, including negative findings, to the City and CDFW before the City issues a grading permit for the Project and any ground-disturbing activities and vegetation removal.	Before the City issues a grading permit for the Project and any ground-disturbing activities and vegetation removal	Royal Investors Group, LLC/City
MM-BIO-2-Impacts on Swainson's Hawk-Fully Avoid Nests	If surveys locate a Swainson's hawk nest, nests shall be fully avoided and no Project construction and activities shall occur within ½ mile of an active nest between March 1 and September 15. No trees or vegetation shall be removed between March 1 and September 15.	During Project construction and activities	Royal Investors Group, LLC/City
MM-BIO-3-Impacts on Swainson's	If take or adverse impacts to Swainson's hawk cannot be avoided, the Project Applicant shall consult with CDFW and obtain appropriate take authorization from CDFW. The Project Applicant shall provide a copy of a fully executed take authorization before	Before the City issues a grading permit for the Project	Royal Investors Group, LLC/City

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 24 of 30

Hawk-Incidental Take Permit	the City issues a grading permit for the Project and before any ground disturbance and vegetation removal.	and any ground-disturbing activities and vegetation removal	
MM-BIO-4- Impacts on Swainson's Hawk- Replacement Habitat- Mitigation Bank	Permanent impacts to foraging habitat for Swainson's hawk shall be offset by the Project Applicant. The Project Applicant shall purchase 60 acres of preservation credits at mitigation bank offering credits for Swainson's hawk and whose service area contains the Project site. The Project Applicant shall submit the credit amount, bank sponsor, habitat types(s), and map of the mitigation site to the City before the City issues a grading permit for the Project and before any ground-disturbing activities or vegetation removal.	Before the City issues a grading permit for the Project and any ground-disturbing activities and vegetation removal	Royal Investors Group, LLC/City
MM-BIO-5- Impacts on Swainson's Hawk- Replacement Habitat-Land Acquisition	If credits at a mitigation bank are not available, the Project Applicant shall acquire 60 acres of land to protect habitat for Swainson's hawk in perpetuity. Lands to be conserved shall be selected in consistency with Conservation Actions for Swainson's hawk described in the Antelope Valley Regional Conservation Investment Strategy. The Project Applicant shall protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands. The Project Applicant shall record the conservation easement before the City issues a grading permit for the Project and any ground-disturbing activities and vegetation removal.	Before the City issues a grading permit for the Project and any ground-disturbing activities and vegetation removal	Royal Investors Group, LLC/City
MM-BIO-6- Impacts on Burrowing Owl- Protocol Surveys	Updated burrowing owl protocol surveys shall be conducted on the Project site and within 150 meters from the Project site in accordance with the procedures established by the California Department of Fish and Wildlife March 7, 2012, Staff Report on Burrowing Owl Mitigation. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit	Before the City issues a grading permit for the Project and before the start of	Royal Investors Group, LLC/City

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 25 of 30

	<p>between February 15 to 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 15 June. Protocol-level surveys and a report of findings, including negative findings, shall be provided to the City before the City a grading permit for the Project and before the start of construction/ground disturbing activities.</p> <p>If burrowing owls are identified using the project site, the Project Applicant shall contact the California Department of Fish and Wildlife (CDFW) to determine the appropriate mitigation/management requirements. The Project Applicant shall develop a Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. At a minimum, the following shall be followed: If burrowing owls are detected on site, no ground-disturbing activities, such as vegetation clearance or grading, shall be permitted within a buffer of no fewer than 500 meters from an occupied burrow during the breeding season (February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 165 feet from the burrow. Depending on the level disturbance, a smaller buffer may be established in consultation with CDFW.</p> <p>The Project Applicant shall submit a final Burrowing Owl Mitigation Plan to CDFW and the City before the City issues a grading permit for the Project. The Project Applicant shall implement all measures identified in the Burrowing Owl Mitigation Plan.</p>	<p>construction/ ground disturbing activities</p>	
<p>MM-BIO-7- Impacts on Burrowing Owl- Replacement Habitat – Land Acquisition</p>	<p>The Project Applicant shall acquire 40 acres of land to protect habitat for burrowing owl in perpetuity. To be consistent with Conservation Actions for Burrowing Owl described in the Antelope Valley Regional Conservation Investment Strategy (ICF 2019), the Project Applicant shall acquire mitigation lands that (1) support documented burrowing owl nests, (2) are contiguous with existing protected habitat, and (3) are within the Antelope Valley.</p>	<p>Record the conservation easement before the City issues a grading permit for the Project</p>	<p>Royal Investors Group, LLC/City</p>

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 26 of 30

	<p>The Project Applicant shall protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands. The Project Applicant shall record the conservation easement before the City issues the Project a grading permit.</p> <p>An appropriate non-wasting endowment shall be provided for the long-term management of mitigation lands. A mitigation plan shall include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. Issues that shall be addressed include but are not limited to the following: protection from any future development and zone changes; restrictions on access; proposed land dedications; control of illegal dumping; water pollution; and increased human intrusion.</p>		
MM-BIO-8- Impacts on Burrowing Owl- Rodenticides	No rodenticides and second-generation anticoagulant rodenticides shall be used during Project construction and for the lifetime of the Project.	During Project construction and for the lifetime of the Project	Royal Investors Group, LLC
MM-BIO-9- Impacts on Streams- Notify CDFW/Lake and Streambed Alteration Agreement	The Project Applicant shall notify CDFW pursuant to Fish and Game Code 1602. The Project Applicant shall proof that CDFW was notified before the City issues a grading permit for the Project. If a Lake and Streambed Alteration (LSA) Agreement is needed for the Project, the Project Applicant shall obtain a LSA Agreement from CDFW and provide a copy of the LSA Agreement before the City issues a grading permit for the Project and before any ground disturbance and vegetation removal.	Before the City issues a grading permit for the Project and before any ground disturbance and vegetation removal	Royal Investors Group, LLC/City
MM-BIO-10- Impacts on	The Project Applicant's notification to CDFW shall provide the following information: 1) A stream delineation in accordance with the U.S Fish and	Before the City issues a grading permit	Royal Investors Group, LLC

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 27 of 30

<p>Streams- Notify CDFW</p>	<p>Wildlife Service wetland definition adopted by CDFW;</p> <p>2) Linear feet and/or acreage of streams and associated plant communities that would be permanently and/or temporarily impacted by the Project;</p> <p>3) A discussion as to whether impacts on streams within the Project site would impact those streams immediately outside of the Project site where there is hydrologic connectivity. Potential impacts such as changes to drainage pattern, runoff, and sedimentation shall be discussed; and,</p> <p>4) A hydrological evaluation of the 100-year storm event to provide information on how water and sediment is conveyed through the Project site. Additionally, the hydrological evaluation shall assess a sufficient range of storm events (e.g., 100, 50, 25, 10, 5, and 2-year frequency storm events) to evaluate water and sediment transport under pre-Project and post-Project conditions.</p>	<p>for the Project and before any ground disturbance and vegetation removal</p>	
<p>MM-BIO-11- Impacts on Streams- Lake and Streambed Alteration Agreement</p>	<p>If a LSA Agreement is needed for the Project, the Project Applicant shall comply with the mitigation measures detailed in the LSA Agreement issued by CDFW. The Project Applicant shall also provide compensatory mitigation for impacts on streams at no less than 2:1 for the impacted stream and habitat acreage, or at a ratio acceptable to CDFW.</p>	<p>Before any ground disturbance and vegetation removal</p>	<p>Royal Investors Group, LLC</p>
<p>MM-BIO-12- Impacts on Rare Plants- Survey</p>	<p>The Project Applicant shall retain a qualified botanist with experience surveying for southern California rare plants to survey the Project site and adjacent areas for rare plants. Surveys shall be conducted according to CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. The Project Applicant shall submit a survey report, including negative findings, to the City before the City issues a grading permit for the Project and any ground-disturbing activities and vegetation removal. At a minimum, the survey report shall provide the following information:</p>	<p>Before the City issues a grading permit for the Project and before any ground disturbance and vegetation removal</p>	<p>Royal Investors Group, LLC</p>

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 28 of 30

	<ol style="list-style-type: none"> 1) A description and map of the survey area; 2) Field survey conditions that shall include name(s) of qualified botanists(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals, and species searched; 3) If rare plants are found, a map(s) showing the location of individual plants or populations, and number of plants or density of plants per square feet occurring at each location. The map shall distinguish between species found and which plants/populations will be avoided versus impacted by Project construction and activities that would require mitigation; 4) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each rare plant or population is found. A sufficient description of biological conditions, primarily impacted habitat, shall include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species); and, 5) If rare plants are found, species-specific measures to mitigate for impacts to rare plants and habitat (see Mitigation Measure #13). 		
<p>MM-BIO-13- Impacts on Rare Plants- Replacement Habitat – Land Acquisition</p>	<p>If impacts on CRPR 1 species and habitat cannot be avoided, the Project Applicant shall provide compensatory mitigation at no less than 2:1. The abundance of a rare plant species and total habitat acreage within the mitigation lands shall be no less than 2:1. Mitigation lands shall be in the same watershed as the Project site and support habitat that contains the rare plant species impacted. The Project Applicant shall protect replacement habitat in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity. The Project Applicant shall submit proposed replacement habitat for CDFW review prior to purchasing and recording the conservation easement. The</p>	<p>Submit proposed replacement habitat for CDFW review prior to purchasing and recording the conservation easement</p>	<p>Royal Investors Group, LLC/City</p>

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 29 of 30

	Project Applicant shall record the conservation easement before the City issues a grading permit for the Project.	Before the City issues a grading permit for the Project	
MM-BIO-14- Impacts on Nesting Birds- Construction outside bird nesting season	To protect nesting birds that may occur within and in areas adjacent to the Project site, Project construction shall occur between September 1 through January 31, outside of the nesting bird season the greatest extent possible. The Project Applicant shall not remove or disturb trees or vegetation during the bird nesting season, which generally runs from February 15 through September 15 (as early as January 1 for some raptors) to avoid take of birds, raptors, or their nests, eggs, or nestlings.	During Project construction and activities	Royal Investors Group, LLC
MM-BIO-15- Impacts on Nesting Birds- Nesting bird survey	<p>If Project construction and activities must occur during the bird nesting season, the Project Applicant shall retain a qualified biologist to conduct a nesting bird survey. The qualified biologist shall conduct a nesting bird survey no more than 7 days prior to the beginning of any ground-disturbance and vegetation removal. The qualified biologist shall survey all potential nesting, roosting, and perching sites within a minimum 500-foot radius from the Project site. If Project construction and activities are delayed or suspended for more than 7 days during the nesting bird season, a qualified biologist shall repeat nesting bird surveys before any activities can recommence.</p> <p>A qualified biologist shall conduct nesting bird surveys before starting Project construction and activities each year over the Project's anticipated construction period of 2 to 3 years.</p>	<p>No more than 7 days prior to the beginning of any ground-disturbance and vegetation removal</p> <p>Before starting Project construction and activities each year</p>	Royal Investors Group, LLC
MM-BIO-16- Impacts on Nesting Birds- Buffers	If nesting birds are identified, the qualified biologist shall establish a no-disturbance buffer of a minimum of 500 feet around active nests. No-disturbance buffers shall be increased, if necessary, to protect the nesting birds. No-disturbance buffers shall be maintained until the breeding season has ended or until a qualified biologist determines that the birds have fledged and are no longer	Establish buffers before starting Project construction	Royal Investors Group, LLC

Cynthia Campana
 City of Lancaster
 April 11, 2022
 Page 30 of 30

	<p>reliant upon the nest or parental care for survival.</p>	<p>and activities each year</p> <p>Maintain buffers during Project construction and activities</p>	
<p>MM-BIO-17- Impacts on Nesting Birds- Protect trees in place</p>	<p>The Project Applicant shall protect all vegetation and established trees on the Project's west boundary in order to retain these vegetation and trees for nesting birds and raptors. Impacts on the critical root zone of trees shall be avoided. The Project Applicant shall submit a Tree Protection Plan to the City before the City issues a grading permit for the Project and before any ground disturbance and vegetation removal.</p>	<p>Before the City issues a grading permit for the Project and before any ground disturbance and vegetation removal</p>	<p>Royal Investors Group, LLC/City</p>