



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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October 1, 2021

Governor's Office of Planning & Research

Oct 01 2021**STATE CLEARINGHOUSE**

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**Subject: Site Plan Review No. 21-07, Mitigated Negative Declaration, SCH #2021090068,
City of Lancaster, Los Angeles County**

Dear Ms. Swain:

The California Department of Fish and Wildlife (CDFW) has reviewed an Initial Study/Mitigated Negative Declaration (MND) from the City of Lancaster (City; Lead Agency) for the Site Plan Review No. 21-07 Project (Project). The Project is proposed by the Antelope Valley Transit Authority (AVTA; Project Applicant). 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 & 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.

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Project Description and Summary

Objective: The Project proposes to construct a photovoltaic (PV) solar energy facility across 43 acres comprised of seven undeveloped parcels adjacent to an existing AVTA bus depot. The Project would tie into an existing Southern California Edison grid.

The Project consists of the construction, operation, and eventual decommissioning of a 5.72 megawatt (MW) direct current/4.38 MW alternating current PV solar energy facility. The Project would be constructed as three solar arrays. The first array (northwest meter) would be constructed on a 10-acre parcel northwest of the bus depot. Panels would cover approximately 5 acres and would generate 0.992 MW of power. A small area between the northwest meter and the existing bus depot would be used for future bus parking. The second array (east meter) would be constructed to the northeast of the bus depot on existing AVTA property. The east meter would consist of ground mount solar tracker system of 3,391.47 kilowatt (kW) as well as a battery energy storage system of 2,055kW/8,220-kilowatt hour (kWh). The third array (west meter) would be constructed to the southeast of the bus depot on existing AVTA property. The west meter would consist of ground mount solar tracker system of 1,653.08 kW as well as a battery energy storage system of 1,370kW/5,480kWh. The east meter and west meter together would encompass approximately 22 acres.

Panels and associated equipment would be constructed on compacted native soil. Solar panels would be installed on a ground-mounted solar tracker system. Associated infrastructure for the solar arrays would include tracker foundations and racking, power inverters, transformers, electrical enclosures, data metering and monitoring hardware, overhead cable runs, concrete equipment pads, interior access pathways, and perimeter fencing. Access to the north solar array would be from 6th Street West, and 4th Street West would be used to access the other two arrays. An access road would be installed around the perimeter of each array, and internal access roads would be provided for maintenance of panels and equipment.

Once operational, the Project would be monitored remotely. Normal preventative maintenance and routine inspections would occur as necessary for panel washing, vegetation control, and routine maintenance. During the annual routine maintenance inspection, the entire site would be inspected for signs of deterioration or repair needs. Emergency maintenance and repairs would occur immediately after the failure occurs. The estimated lifespan of the solar arrays is 25 years. If it is determined that the facility is no longer needed, the Project would be decommissioned. All equipment would be removed and disposed of in compliance with City of Lancaster requirements and in accordance with applicable local and state regulations. Grading of the Project site would be minimized to the greatest extent practical, and the Project site would be restored to preconstruction conditions where feasible in compliance with City of Lancaster requirements.

The AVTA has converted their bus fleet to electric vehicles. The Project would support the additional electrical demand needed at AVTA bus recharging stations.

Location: The Project is located on the southeastern corner of the intersection of Avenue L-8 and 6th Street West in the City of Lancaster, east of State Route 14 and west of Sierra Highway.

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Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City in adequately avoiding and/or mitigating the Project's impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

Specific Comments

Comment #1: Impacts on Western Joshua Trees

Issue: The Project will impact western Joshua trees (*Yucca brevifolia*), a candidate species for listing as threatened under CESA.

Specific impacts: The Project would potentially remove up to 56 western Joshua trees and impact an undisclosed acreage of western Joshua tree seedbank. According to page 27 in the MND, "the project has the potential to significantly impact the 56 Joshua trees observed on the site which were noted as predominantly in excellent condition (Appendix B)."

Why impact would occur: Take of western Joshua tree is defined as any activity that results in the removal of a western Joshua tree, or any part thereof, or impacts the seedbank surrounding one or more western Joshua trees (CDFW 2021a). The Project would include removing vegetation, grading, excavating, and compacting of soils. Impacts on western Joshua tree and seedbank may occur as a result of these activities. For instance, the Project may remove western Joshua trees, eliminate and modify habitat, and crush and/or bury living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

Also, the Project may alter the hydrology on site (also see Comment #2: Impacts on Aquatic Resources). Page 43 of the MND states, "development of the proposed project would increase the amount of surface runoff as a result of impervious surfaces associated the solar facility." Page 43 also states, "once the project is built, water may be used to clean the solar panels on a periodic basis." Washing solar panels would introduce a new water source not currently present. Changes to on site hydrology could impact or disturb the root zone of any western Joshua trees preserved on site or immediately adjacent to the Project site. Impacts on the root zone could result in injury or mortality of the western Joshua tree.

Finally, the Project would operate an approximately 43-acre 5.72-megawatt solar energy facility. Solar arrays could have indirect effects on western Joshua trees and habitat preserved on site or immediately adjacent to the Project site. Solar arrays could change habitat supporting western Joshua trees, including vegetation characteristics, soil characteristics, and microclimate (e.g., temperature, humidity) (Choi et al. 2020; Graham et al. 2021; Haji et al n.d.; Surronen et al. 2017; Tanner et al. 2020). Furthermore, solar arrays could reduce the number of individuals of western Joshua trees recruited from seed by changing microclimate conditions necessary to support the mutualistic relationship between the western Joshua trees and its obligate pollinator, yucca moth (*Tegeticula synthetica*).

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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. 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). As to CEQA, inadequate avoidance, minimization, and mitigation measures for impacts on western Joshua trees will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW concurs with Mitigation Measure 6, which would require the Project Applicant to obtain an Incidental Take Permit from the California Department of Fish and Wildlife for incidental take of western Joshua trees. CDFW recommends that the Project Applicant submit an ITP Application that provides the following information (at a minimum):

- 1) An analysis of number of individual western Joshua trees (clonal and non-clonal) that would be impacted both within the Project site and within 300 feet of the Project site;
- 2) An analysis of acres of western Joshua tree seedbank impacted;
- 3) A map showing where impacts on western Joshua trees and seedbank would occur relative to the Project's site plan;
- 4) A discussion of whether solar arrays for the Project's lifetime could have impact any western Joshua trees preserved within the Project site and any western Joshua trees adjacent to the Project site;
- 5) A hydrologic analysis of how water would be transported across the Project site after build-out;
- 6) A map showing the alliance and/or association-based plant communities in the Project site following the [Manual of California Vegetation](#) (MCV), second edition (Sawyer et al. 2009); and,
- 7) Photographs of the Project site, including a minimum two photographs per acre depicting different aspects, and a photograph documenting each western Joshua tree.

Mitigation Measure #2: CDFW recommends the Project Applicant provide compensatory mitigation for unavoidable Project impacts on western Joshua trees. Mitigation should be higher if the Project will impact a western Joshua tree population that is increasing through seedling recruitment. An appropriate mitigation site should at minimum:

- 1) Have Joshua trees of similar density, abundance, and age structure;
- 2) Support plant communities of similar native plant species composition, density, structure, and function to habitat that was impacted;
- 3) Support nursery plants for Joshua tree recruits; and,
- 4) Not be exposed or have the potential to be exposed to disturbances such as OHV activity, illegal access, and encroachment from pending or future development.

Mitigation Measure #3: CDFW recommends the Project Applicant protect mitigation lands 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). Assembly Bill 1094 amended Government Code sections 65965-

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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. A conservation easement and endowment funds should be fully acquired, established, transferred, or otherwise executed prior to impacts on western Joshua trees.

Recommendation #1: CDFW recommends the City revise the final environmental document to provide the following information:

- 1) If the Project would impact the western Joshua tree seedbank;
- 2) If the Project would impact western Joshua trees adjacent to the Project site;
- 3) Acres of habitat supporting western Joshua trees would be impacted;
- 4) Project-related activities that would impact western Joshua trees;
- 5) Direct and indirect impacts on western Joshua trees; and,
- 6) When impacts on western Joshua trees would occur and if impacts on western Joshua trees would occur during the operation and maintenance phase of the Project's lifetime.

Recommendation #2: To obtain appropriate take authorization under CESA, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to a CESA candidate species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. It is important that the take proposed to be authorized by CDFW's ITP be described in detail in the CEQA document prepared for the Project. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP. However, it is worth noting that mitigation for impacts to a CESA candidate species proposed in a Project's CEQA document may not necessarily satisfy mitigation required to obtain a CESA ITP.

Comment #2: Impacts on Aquatic Resources

Issue: The Project may impact streams.

Specific impacts: The Project may result in impacts to the bed, bank, and channel of Amargosa Creek and an unnamed drainage.

Why impact would occur: According to page 28 in the MND, "two drainages are present at the site. Amargosa Creek that trends south to north is on the western side of the site. An unnamed drainage is on the eastern side of the site." According to the Project's site plan provided in Figures 4 and 5, the Project Applicant proposes a setback of 48 feet from Amargosa Creek to avoid impacts on Amargosa Creek and the 100-year floodplain. Page 28 concludes, "the layout for the proposed solar project avoids disturbing or placing any project features in Amargosa

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Creek or the unnamed drainage and, therefore, no impacts would occur.” For these reasons, the MND does not propose mitigation for impacts to streams.

The Project may still impact streams even though the Project has proposed to relocate the Project away from Amargosa Creek and unnamed drainage. Project construction and activities may occur adjacent to streams. Project ground-disturbing activities and use of large machinery (e.g., skid steer, motor grader, pile driver, trencher, and crane) to grade the Project site, compact soils, and create trenches could result in stream bank erosion and input of excess sediment into streams. Also, vegetation removal adjacent to streams may destabilize the ground surface and result in increased sediment, debris, and pollutant input into streams. Finally, activities such as vehicle traffic and foot traffic adjacent, within, and through streams could also contribute to stream bank erosion and disturbance of the ground surface. Erosion and excess sediment input could impact the bed, bank, and channel of streams. Dryland streams typically lack cohesive clay and have higher percentages of silt (Vyverberg 2010). Silt is more prone to erosion. Given the nature of sediment that could be on site, Project ground disturbing activities and vegetation removal could be more likely to result in erosion and movement of sediment and debris.

Furthermore, the Project proposes a perimeter fence that could be still within the 100-year floodplain or immediately adjacent to the floodplain. During a 100-year flood event, the fence and solar panel arrays (e.g., mounts, pads, piles) lead to scouring. This could impact Amargosa Creek by increasing erosion, increasing sediment input, and disturbing vegetation along Amargosa Creek.

Evidence impacts would be significant: The Project could impact streams which absent specific mitigation could result in substantial alterations to the bed, bank, and channel of Amargosa Creek and unnamed channel.

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 plant 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:

- 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.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW recommends the City require the Project Applicant notify CDFW pursuant to Fish and Game Code 1600 et seq. prior to the City issuing any construction related permits. Based on this notification and other information, CDFW determines whether an LSA Agreement with the City is required prior to conducting Project activities. Please visit CDFW’s [Lake and Streambed Alteration Program](#) webpage to for information about LSA Notification and online submittal through the Environmental Permit Information Management

¹ Any river, stream, or lake" includes those that are dry for periods of time as well as those that flow year-round.

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System (EPIMS) Permitting Portal (CDFW 2021b). CDFW recommends the City obtain an LSA Agreement (per CDFW's discretion) before the City starting any Project construction and activities.

Mitigation Measure #2: CDFW recommends the LSA Notification include the following information and analyses:

- 1) Quantification of the linear feet of streams and area of associated vegetation that would be impacted. 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);
- 2) An analysis providing information on whether impacts to streams within the immediate project area could cause impacts downstream where there is hydrologic connectivity;
- 3) A hydrological evaluation of the 100-year flood event for existing and proposed conditions to provide information on how water and sediment is conveyed through the Project site;
- 4) A scour analysis demonstrating that stream banks, bed, and channel would not erode and be impaired (e.g., aggrade, incised) as a result of Project activities and proposed solar panel arrays and associated infrastructure;
- 5) A discussion as to why the chosen setback distance of 48 feet from Amargosa Creek is adequate to avoid impacts on Amargosa Creek and floodplain; and,
- 6) A complete description of routine maintenance activities that may be required for the life of the Project. If applicable, the LSA Notification may include measures to avoid impacts on Amargosa Creek and vegetation during routine maintenance activities occurring for the life of the Project.

Mitigation Measure #3: CDFW recommends the City require the Project Applicant to provide compensatory mitigation for mitigate for impacts on streams and associated plant communities at no less than 3:1 or per requirements in an LSA Agreement. Mitigation should occur where a stream supports desert plant communities impacted by the Project and within the same watershed.

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 City 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. As such, CDFW recommends the City consider CDFW's comments and revise the MND by incorporating the mitigation measures and revisions recommended in this letter into the Project's final environmental document.

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.

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Comment #3: Inadequate Disclosure of Adequacy of Biological Impact Fee

Issue: The MND is missing information that would assist in public review and commenting on the adequacy of the Biological Impact Fee to offset the cumulative loss of biological resources in the Antelope Valley.

Specific Impacts: The Project would develop approximately 43 acres of undeveloped land. The Project would eliminate habitat that currently supports western Joshua trees and sensitive plant communities and could potentially support burrowing owls, northern California legless lizard, and coast horned lizard.

Why impacts would occur: 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 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 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.

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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 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 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 MND 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 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 USFWS.

Recommended Potentially Feasible Mitigation Measure(s):

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

- a) Whether the Biological Impact Fee is going towards an established program;
- b) How the program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA;
- c) What the Biological Impact Fee would acquire;
- d) What biological resources would the Biological Impact Fee protect/conserves;
- e) Why the Biological Impact Fee is appropriate for mitigating the cumulative loss of biological resources in the Antelope Valley;
- f) Why the Biological Impact Fee is sufficient to purchase land or credits at a mitigation bank;
- g) Where land would be acquired or where the mitigation bank is located;
- h) When the Biological Impact Fee would be used; and,
- i) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.

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

Recommendation #2: CDFW recommends that the MND provide a discussion describing commitment to mitigation via the Biological Impact Fee. For example, the MND should provide specifics as to when the Project Applicant would pay the Biological Impact Fee; what mechanisms would be implemented to ensure the Biological Impact Fee is paid; and when and where the Biological Impact Fee would be used to offset the Project's impacts. Also, the MND should provide specific performance standards, as well as actions to achieve those performance standards.

Recommendation #3: CDFW recommends recirculating the MND for a more meaningful public review and assessment of the Biological Impact Fee. Additionally, the MND should be recirculated 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)].

Comment #3: Impacts on Burrowing Owls

Issue: The Project may impact burrowing owls (*Athene cunicularia*), a California Species of Special Concern (SSC).

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 and degradation of 43 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: Page 3-1 of the Biological Reconnaissance Survey states that there is a high probability that habitat at the site can support burrowing owls. Accordingly, the includes Mitigation Measure 3, which proposes buffers and exclusion to avoid and minimize impacts on burrowing owls. The MND does not provide compensatory mitigation for potential impacts on habitat even though build out of the Project could result permanent loss and degradation of 43 acres of breeding, wintering, and foraging habitat for burrowing owl. In California, threat factors affecting burrowing owl populations include habitat loss, degradation, and modification. Loss of 43 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.

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 ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;

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- 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 2021c).

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 below a level of significance. The MND does not provide mitigation for potential loss of habitat supporting burrowing owls.

Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing 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 #1: CDFW recommends the City revise Mitigation Measure #3 by incorporating the underlined language and removing the language that has strikethrough:

“The applicant shall retain a qualified biologist who shall conduct burrowing owl protocol surveys on the Project site and within 100 feet (minimum) of the Project site where there is suitable habitat in accordance with the procedures established by the California Department of Fish and Wildlife in accordance with the established burrowing owl protocols. March 7, 2012, Staff Report on Burrowing Owl Mitigation prior to the start of construction/ground disturbing activities the City issuing construction permits. In California, the burrowing owl breeding season extends from 1 February to 31 August with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between February 15 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.

If burrowing owls are identified during the surveys, the applicant shall prepare an Impact Assessment in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. Then, the applicant shall develop a Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The applicant shall contact the California Department of Fish and Wildlife (CDFW) and to develop appropriate mitigation/management procedures. The applicant shall submit a final Burrowing Owl Mitigation Plan to the City prior to the City issuing construction permits. The applicant shall implement all measures identified in the Burrowing Owl Mitigation Plan. be followed.

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At a minimum, the following shall occur:

- If burrowing owls are identified during the non-nesting season, a qualified biologist shall install one-way gates to relocate the owl to a suitable nearby property. Upon confirmation that the burrow is empty, the burrow shall be collapsed.
- In the event that a breeding pair or female owl with offspring are present at the burrow, a buffer zone of at least 50 feet shall be established around the burrow until the offspring have fledged and left the burrow. No work shall occur within the buffer zone. The specific buffer zone shall be established in coordination with CDFW.”

Mitigation Measure #2: If the Project will impact habitat supporting burrowing owls, CDFW recommends that the City require the Project Applicant to offset impacts on habitat supporting a Species of Special Concern at no less than 2:1. There should be no net loss of burrowing owl habitat. The Project Applicant should purchase credits at mitigation bank offering credits for burrowing owl habitat and whose service area contains the Project site. Alternatively, the Project Applicant should set aside replacement habitat. Replacement habitat should 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 (see Comment #1, Mitigation Measure #3).

Mitigation Measure #3: CDFW recommends that the City require the Project Applicant to avoid using any rodenticides and second-generation anticoagulant rodenticides during and for the lifetime of the Project.

Comment #4: Impacts on Species of Special Concern

Issue: The Project may impact northern California legless lizard (*Anniella pulchra*) and coast horned lizard (*Phrynosoma blainvillii*), both SSC.

Specific impacts: Project construction and activities, directly or through habitat modification, may result in direct injury or mortality (trampling, crushing), reduced reproductive capacity, population declines, or local extirpation of an SSC. Also, loss of foraging, breeding, or nursery habitat for an SSC may occur.

Why impacts would occur: Page 3-1 of the Biological Reconnaissance Survey states that there is a high probability that habitat at the site can support northern California legless lizard and coast horned lizard. As such, the Project could impact SSC. Impacts to an SSC could result from ground-disturbing activities and vegetation removal. Wildlife may be trapped or crushed under structures. Large equipment, equipment and material staging, and vehicle and foot traffic could trample or bury wildlife. SSC could be injured or killed. Impacts on these SSC are more likely to occur because these are cryptic species that are less mobile and seek refuge under structures.

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:

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- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as ESA-, 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 2021c).

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 below a level of significance. The MND does not provide mitigation for potential impacts on SSC. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing 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 #1: Biological Monitor - To avoid direct injury and mortality of SSC, CDFW recommends the City require the Project Applicant to have a qualified biologist on site to move out of harm's way wildlife of low mobility that would be injured or killed. 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. In areas where SSC was found, work may only occur in these areas after a qualified biologist has determined it is safe to do so. Even so, the qualified biologist should advise workers to proceed with caution near flagged areas.

A qualified biologist should be on site daily during initial ground and habitat disturbing activities and vegetation removal. Then, the qualified biologist should be on site weekly or bi-weekly (once every two weeks) for the remainder of Project until the cessation of all ground disturbing activities to ensure that no wildlife is harmed.

Mitigation Measure #2: Scientific Collecting Permit – CDFW recommends the City require the Project Applicant retain a qualified biologist with appropriate handling permits, or should obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor

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project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's [Scientific Collection Permits](#) webpage for information (CDFW 2021d).

Pursuant to the [California Code of Regulations, title 14, section 650](#), the Project Applicant/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. The LSA Agreement may provide similar take or possession of species as described in the conditions of the agreement (see Comment #2 Impacts on Aquatic Resources).

Mitigation Measure #2: Wildlife Relocation Plan - Prior to initial ground and habitat disturbing activities and vegetation removal, CDFW recommends the Project Applicant retain a qualified biologist to prepare a Wildlife Relocation Plan. The Wildlife Relocation Plan should describe all wildlife species that could occur within the Project site and proper handling and relocation protocols. The Wildlife Relocation Plan should include species-specific relocation areas, at least 200 feet outside of the Project site and in suitable and safe relocation areas. The Project Applicant should submit a copy of a Wildlife Relocation Plan to the City prior to initial ground and habitat disturbing activities and vegetation removal. No bird nests, eggs, or nestlings may be removed or relocated at any time (see Comment #5: Impacts on Nesting Birds).

Mitigation Measure #5: Injured or Dead Wildlife – If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW and the City within three calendar days of the incident or finding. The report should include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

Comment #5: Impacts on Nesting Birds

Issue: The Project may impact nesting birds.

Specific impacts: The Project could result in injury to and mortality of bird nests, eggs, and nestlings.

Why impacts would occur: The Project site has vegetation that could provide suitable structure for nesting birds. Page 27 in the MND states, "Past nests were observed in Joshua trees indicating that the site is suitable for nesting birds." Since the Project site could support nesting birds, Project-related ground disturbing activities (e.g., staging, mobilization, grading, excavating, compacting dirt) and vegetation removal during bird nesting season could impact nesting birds. These activities would elevate levels of noise, human activity, dust, and ground vibrations and would reduce or eliminate nesting structure. These activities occurring near potential nests could cause birds to abandon their nests, resulting in the loss of fertile eggs or nestlings. Removing vegetation supporting active nests could result in loss of those nests. Accordingly, the Project could result in significant impacts on nesting birds.

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The MND includes Mitigation Measure 4 to address potential impacts on nesting birds. Mitigation Measure 4 requires the Project Applicant to conduct nesting bird surveys, obtain permits from CDFW, and implement buffers. The Project's Mitigation Measure 4 as it is currently proposed, may be insufficient to reduce impacts to nesting birds. First, Mitigation Measure 4 would require surveys 30 days before the start of construction/ground-disturbing activities. Surveys conducted too early or in advance of Project commencement could miss nesting birds that establish nests onsite after the survey but before beginning construction/ground-disturbing activities. These nests could be destroyed if the Project proceeds assuming that nesting birds are absent based on a survey conducted 30 days prior to starting the Project. Second, Mitigation Measure 4 would require the Project Applicant to obtain permits from CDFW to take, possess, or destroy nests, eggs, or nestlings. CDFW does not issue any permits to take, possess, or destroy active bird and raptor nests or nestlings. Finally, the 50-foot buffer distance proposed by Mitigation Measure 4 may not be sufficient to prevent or minimize impacts to nesting birds while construction activities proceed during the nesting season. Without an adequate buffer, nesting birds, eggs, and nestlings may still be impacted by elevated levels of noise, human activity, dust, and ground vibrations.

Evidence impacts would be significant: 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. As such, impacts on nesting birds and raptors, either directly or indirectly through nest abandonment, reproductive suppression, or loss of occupied nesting habitat, would be a significant impact absent appropriate mitigation. Inadequate avoidance, minimization, and mitigation measures for impacts on nesting birds and raptors will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status by CDFW or U.S. Fish and Wildlife Service (USFWS).

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the City add a measure to avoid impacts on nesting birds (Mitigation Measure #1) and revise Mitigation Measure 4 by incorporating the underlined language and removing the language that has strikethrough (Mitigation Measure #2).

Mitigation Measure #1: To protect nesting birds and raptors that may occur on site or adjacent to the Project site, construction/ground disturbing activities should not occur from February 15 through September 15. If nesting raptors are present, no construction/ground disturbing activities should occur starting January 1.

Mitigation Measure #2: "If construction must occur between February 15 through September 15, a nesting bird survey shall be conducted by a qualified biologist within 30 7 days prior to the start of construction/ground disturbing activities. Surveys will include all potential nesting areas within a 500-foot radius of the Project site. If Project construction/ground disturbing activities are delayed or suspended for more than 7 days during the breeding season, surveys will be repeated before activities can begin or restart."

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"If nesting birds or raptors are encountered, all work in the area shall cease until a qualified biologist determines that either the young birds have fledged, or the appropriate permits are obtained from the California Department of Fish and Wildlife. If active bird nests are identified during the survey, the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. Impacts to nest will be avoided by delay of work or establishing a buffer of 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests raptor nests, and 50 feet around other migratory bird species and 0.5 mile around active nests of a CESA or Endangered Species Act-listed bird species. These buffers shall be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. These buffers shall be increased to protect the nesting birds, if necessary, as determined by a qualified biologist."

Additional Comments

- 1) Mohave Ground Squirrel. CDFW concurs with Mitigation Measure 5 addressing potential impacts on the Mohave ground squirrel (*Xerospermophilus mohavensis*), a CESA-listed species. CDFW looks forward to receiving a survey report for Mohave ground squirrel and/or an ITP application for Mohave ground squirrel. Please note that a qualified biologist should conduct protocol level surveys for Mohave ground squirrel adhering to survey methods described in California Department of Fish and Game's January 2003 [Mohave Ground Squirrel Survey Guidelines](#).
- 2) Construction Fencing. CDFW recommends that any fencing used during and after the Project be constructed with materials that are not harmful to wildlife. Prohibited materials should include, but are not limited to, spikes, glass, razor, or barbed wire. Use of chain link and steel stake fence should be avoided or minimized as this type of fencing can injure wildlife or create barriers to wildlife dispersal. All hollow posts and pipes should be capped to prevent wildlife entrapment and mortality. 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. Fences should not have any slack that may cause wildlife entanglement.
- 3) 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, please report any special status species detected by completing and submitting [CNDDDB Online Field Survey Form](#) (CDFW 2021e). The City should ensure that the Project applicant has submitted data properly, with all data fields applicable filled out, prior to finalizing/adopting the environmental document. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred. The Project applicant should provide CDFW with confirmation of data submittal.
- 4) Mitigation and Monitoring Reporting Plan. CDFW recommends updating the MND's proposed Biological Resources Mitigation Measures to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit

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conditions, agreements, or other legally binding instruments [(Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). 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).

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

Conclusion

We appreciate the opportunity to comment on the Project to assist the City of Lancaster in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City 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:

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Erinn Wilson-Olgin
Environmental Program Manager I
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ec: CDFW

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

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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
MM-BIO-1 – Impacts Western Joshua Tree – CESA ITP	<p>The Project Applicant shall obtain an Incidental Take Permit from the California Department of Fish and Wildlife for all Joshua trees on the site which would be impacted or removed during the construction and operation of the proposed project prior to the issuance of any construction related permits.</p> <p>The Project Applicant shall submit an ITP Application that provides the following information (at a minimum):</p> <ol style="list-style-type: none"> 1) An analysis of number of individual western Joshua trees (clonal and non-clonal) that would be impacted both within the Project site and within 300 feet of the Project site; 2) An analysis of acres of western Joshua tree seedbank impacted; 3) A map showing where impacts on western Joshua trees and seedbank would occur relative to the Project’s site plan; 4) A discussion of whether solar arrays for the Project’s lifetime could have impact any western Joshua trees preserved within the Project site and any western Joshua trees adjacent to the Project site; 5) A hydrologic analysis of how water would be transported across the Project site after build-out; 6) A map showing the alliance and/or association-based plant communities in the Project site following the 	Prior to the City issuing a construction related permits	City of Lancaster/ Project Applicant

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	<p>Manual of California Vegetation (MCV), second edition; and,</p> <p>7) Photographs of the Project site, including a minimum two photographs per acre depicting different aspects, and a photograph documenting each western Joshua tree.</p>		
<p>MM-BIO-2 – Impacts Western Joshua Tree – Replacement Habitat</p>	<p>The Project Applicant shall provide compensatory mitigation for unavoidable Project impacts on western Joshua trees. Mitigation shall be higher if the Project will impact a western Joshua tree population that is increasing through seedling recruitment. An appropriate mitigation site shall at minimum:</p> <ol style="list-style-type: none"> 1) Have Joshua trees of similar density, abundance, and age structure; 2) Support plant communities of similar native plant species composition, density, structure, and function to habitat that was impacted; 3) Support nursery plants for Joshua tree recruits; and, 4) Not be exposed or have the potential to be exposed to disturbances such as OHV activity, illegal access, and encroachment from pending or future development. 	<p>Prior to the City issuing a construction related permits</p>	<p>City of Lancaster/ Project Applicant</p>
<p>MM-BIO-3 – Impacts Western Joshua Tree – Compensatory Mitigation</p>	<p>The Project Applicant shall protect mitigation lands 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). 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. A conservation easement and</p>	<p>Prior to submitting an ITP application or during the ITP process/ Prior to impacts on western Joshua trees</p>	<p>Project Applicant</p>

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	endowment funds shall be fully acquired, established, transferred, or otherwise executed prior to impacts on western Joshua trees.		
MM-BIO-4 – Impacts on Aquatic Resources – 1602 Notification	The Project Applicant shall notify CDFW pursuant to Fish and Game Code 1600 et seq.	Prior to the City issuing any construction related permits	City of Lancaster/ Project Applicant
MM-BIO-5 – Impacts on Aquatic Resources – 1602 Notification	<p>The LSA Notification shall include the following information and analyses:</p> <ol style="list-style-type: none"> 1) Quantification of the linear feet of streams and area of associated vegetation that would be impacted. 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); 2) An analysis providing information on whether impacts to streams within the immediate project area could cause impacts downstream where there is hydrologic connectivity; 3) A hydrological evaluation of the 100-year frequency storm event for existing and proposed conditions to provide information on how water and sediment is conveyed through the Project site; 4) A scour analysis demonstrating that stream banks, bed, and channel would not erode and be impaired (e.g., aggrade, incised) as a result of Project activities and proposed solar panel arrays and associated infrastructure; 5) A discussion as to why the chosen setback distance of 48 feet from Amargosa Creek is adequate to avoid impacts on Amargosa Creek and floodplain; and, 6) A complete description of routine maintenance activities that may be required for the life of the Project. If applicable, the LSA Notification may include measures to avoid impacts on Amargosa Creek and vegetation during routine maintenance activities occurring for the life of the Project. 	Prior to the City issuing any construction related permits	Project Applicant

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MM-BIO-6 – Impacts on Aquatic Resources- Compensatory Mitigation	<p>The Project Applicant shall provide compensatory mitigation for mitigate for any impacts on streams and associated plant communities at no less than 3:1 or per requirements in an LSA Agreement. Mitigation shall occur where a stream supports desert plant communities impacted by the Project and within the same watershed.</p>	<p>Prior to the City issuing any construction related permits</p>	<p>Project Applicant</p>
MM-BIO-7 – Impacts on Burrowing Owls - Surveys	<p>The Project Applicant shall retain a qualified biologist who shall conduct burrowing owl protocol surveys on the Project site and within 100 feet (minimum) of the Project site where there is suitable habitat in accordance with the procedures established by the California Department of Fish and Wildlife March 7, 2012, Staff Report on Burrowing Owl Mitigation prior to the City issuing construction permits. In California, the burrowing owl breeding season extends from 1 February to 31 August with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between February 15 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.</p> <p>If burrowing owls are identified during the surveys, the applicant shall prepare an Impact Assessment in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. Then, the applicant shall develop a Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The applicant shall contact the California Department of Fish and Wildlife (CDFW) to develop appropriate mitigation/management procedures. The applicant shall submit a final Burrowing Owl Mitigation Plan to the City prior to the City issuing construction permits. The applicant shall implement all measures identified in the Burrowing Owl Mitigation Plan. At a minimum, the following shall occur:</p>	<p>Prior to the City issuing any construction related permits</p>	<p>City of Lancaster/ Project Applicant</p>

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	<ul style="list-style-type: none"> If burrowing owls are identified during the non-nesting season, a qualified biologist shall install one-way gates to relocate the owl to a suitable nearby property. Upon confirmation that the burrow is empty, the burrow shall be collapsed. In the event that a breeding pair or female owl with offspring are present at the burrow, a buffer zone of at least 50 feet shall be established around the burrow until the offspring have fledged and left the burrow. No work shall occur within the buffer zone. The specific buffer zone shall be established in coordination with CDFW. 		
MM-BIO-8 – Impacts on Burrowing Owls – Habitat Loss	If the Project will impact habitat supporting burrowing owls, the Project Applicant shall offset impacts on habitat supporting a Species of Special Concern at no less than 2:1. There shall be no net loss of burrowing owl habitat. The Project Applicant shall purchase credits at mitigation bank offering credits for burrowing owl habitat and whose service area contains the Project site. Alternatively, the Project Applicant shall set aside replacement habitat. Replacement habitat shall 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.	Prior to ground disturbing activities and vegetation removal	Project Applicant
MM-BIO-9 – Impacts on Burrowing Owls – Rodenticides	The Project Applicant shall not use any rodenticides and second-generation anticoagulant rodenticides during and for the lifetime of the Project.	For the Project's lifetime	Project Applicant
MM-BIO-10 – Impacts on Species of Special Concern – Biological Monitor	To avoid direct injury and mortality of SSC, the Project Applicant shall have a qualified biologist on site to move out of harm's way wildlife of low mobility that would be injured or killed. Wildlife shall be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site. In areas where SSC was found, work may only occur in these areas after a qualified	Daily during initial ground and habitat disturbing activities and vegetation removal	Project Applicant

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	<p>biologist has determined it is safe to do so. Even so, the qualified biologist shall advise workers to proceed with caution near flagged areas.</p> <p>A qualified biologist shall be on site daily during initial ground and habitat disturbing activities and vegetation removal. Then, the qualified biologist shall be on site weekly or bi-weekly (once every two weeks) for the remainder of Project until the cessation of all ground disturbing activities to ensure that no wildlife is harmed.</p>	Weekly/Bi-weekly for the for the remainder of Project until the cessation of all ground disturbing activities	
MM-BIO-11 – Impacts on Species of Special Concern – Scientific Collecting Permit	Only a qualified biologist with appropriate handling permits, shall capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities.	During Project construction and activities	Project Applicant
MM-BIO-12 – Impacts on Species of Special Concern – Wildlife Relocation Plan	Prior to initial ground and habitat disturbing activities and vegetation removal, the Project Applicant shall retain a qualified biologist to prepare a Wildlife Relocation Plan. The Wildlife Relocation Plan shall describe all wildlife species that could occur within the Project site and proper handling and relocation protocols. The Wildlife Relocation Plan shall include species-specific relocation areas, at least 200 feet outside of the Project site and in suitable and safe relocation areas. The Project Applicant shall submit a copy of a Wildlife Relocation Plan to the City prior to initial ground and habitat disturbing activities and vegetation removal. No bird nests, eggs, or nestlings may be removed or relocated at any time.	Prior to initial ground and habitat disturbing activities and vegetation removal	City of Lancaster/ Project Applicant
MM-BIO-13 – Impacts on Nesting Birds – Avoidance	To protect nesting birds and raptors that may occur on site or adjacent to the Project site, construction/ground disturbing activities shall not occur from February 15 through September 15. If nesting raptors are present, no construction/ground disturbing activities shall occur starting January 1.	Prior to Project construction and activities	Project Applicant

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<p>MM-BIO-14 – Impacts on Nesting Birds – Surveys and Buffers</p>	<p>If construction must occur between February 15 through September 15, a nesting bird survey shall be conducted by a qualified biologist within 7 days prior to the start of construction/ground disturbing activities. Surveys will include all potential nesting areas within a 500-foot radius of the Project site. If Project construction/ground disturbing activities are delayed or suspended for more than 7 days during the breeding season, surveys will be repeated before activities can begin or restart.</p> <p>If nesting birds or raptors are encountered, all work in the area shall cease until a qualified biologist determines that young birds have fledged. If active bird nests are identified during the survey, the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. Impacts to nest will be avoided by delay of work or establishing a buffer of 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests raptor nests, and 0.5 mile around active nests of a CESA or Endangered Species Act-listed bird species. These buffers shall be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. These buffers shall be increased to protect the nesting birds, if necessary, as determined by a qualified biologist.</p>	<p>Surveys: 7 days prior to the start of construction and activities</p> <p>During Project construction and activities</p>	<p>Project Applicant</p>
<p>REC 1 – Western Joshua Tree Impacts</p>	<p>The City should revise the environmental document to provide the following information:</p> <ol style="list-style-type: none"> 1) If the Project would impact the western Joshua tree seedbank; 2) If the Project would impact western Joshua trees adjacent to the Project site; 3) Acres of habitat supporting western Joshua trees would 	<p>Prior to finalizing CEQA document</p>	<p>City of Lancaster</p>

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	<p>be impacted;</p> <p>4) Project-related activities that would impact western Joshua trees;</p> <p>5) Direct and indirect impacts on western Joshua trees; and,</p> <p>6) When impacts on western Joshua trees would occur and if impacts on western Joshua trees would occur during the operation and maintenance phase of the Project's lifetime.</p>		
<p>REC 2 – Western Joshua Tree Take Authorization</p>	<p>To obtain appropriate take authorization under CESA, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to a CESA candidate species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. It is important that the take proposed to be authorized by CDFW's ITP be described in detail in the CEQA document prepared for the Project. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP. However, it is worth noting that mitigation for impacts to a CESA candidate species proposed in a Project's CEQA document may not necessarily satisfy mitigation required to obtain a CESA ITP.</p>	<p>Prior to finalizing CEQA document</p> <p>CESA ITP Pre-Consultation</p>	<p>City of Lancaster/ Project Applicant</p>
<p>REC-3 – 1602 Notification</p>	<p>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 City 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</p>	<p>Prior to finalizing CEQA document</p>	<p>City of Lancaster</p>

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	<p>potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. As such, CDFW recommends the City consider CDFW’s comments and revise the MND by incorporating the mitigation measures and revisions recommended in this letter into the Project’s final environmental document.</p> <p>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.</p>		
<p>REC 4 – Biological Impact Fee</p>	<p>The City should update the MND to provide adequate, complete, and good-faith disclosure of information that would address the following in relation to the Project:</p> <ul style="list-style-type: none"> a) Whether the Biological Impact Fee is going towards an established program; b) How the program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA; c) What the Biological Impact Fee would acquire; d) What biological resources would the Biological Impact Fee protect/conserve; e) Why the Biological Impact Fee is appropriate for mitigating the cumulative loss of biological resources in the Antelope Valley; f) Why the Biological Impact Fee is sufficient to purchase land or credits at a mitigation bank; g) Where land would be acquired or where the mitigation bank is located; h) When the Biological Impact Fee would be used; and, 	<p>Prior to finalizing CEQA document</p>	<p>City of Lancaster</p>

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	i) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.		
REC 5 – Biological Impact Fee	The MND should provide a discussion describing commitment to mitigation via the Biological Impact Fee. For example, the MND should provide specifics as to when the Project Applicant would pay the Biological Impact Fee; what mechanisms would be implemented to ensure the Biological Impact Fee is paid; and when and where the Biological Impact Fee would be used to offset the Project’s impacts. Also, the MND should provide specific performance standards, as well as actions to achieve those performance standards.	Prior to finalizing CEQA document	City of Lancaster
REC 6 – Recirculate CEQA Document	The City should recirculate the MND for a more meaningful public review and assessment of the Biological Impact Fee. Additionally, the MND should be recirculated 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.	Prior to finalizing CEQA document	City of Lancaster
REC 7 – Mohave ground squirrel – surveys and CESA ITP	CDFW looks forward to receiving a survey report for Mohave ground squirrel and/or an ITP application for Mohave ground squirrel. Please note that a qualified biologist should conduct protocol level surveys for Mohave ground squirrel adhering to survey methods described in California Department of Fish and Game’s January 2003 Mohave Ground Squirrel Survey Guidelines .	Prior to the City issuing any construction related permits	City of Lancaster/ Project Applicant
REC 8 – Construction Fencing	Any fencing used during and after the Project be constructed with materials that are not harmful to wildlife. Prohibited materials should include, but are not limited to, spikes, glass, razor, or barbed wire. Use of chain link and steel stake fence should be avoided or minimized as this type of fencing can injure wildlife or create barriers to wildlife dispersal. All hollow posts and pipes should be capped to prevent wildlife entrapment and mortality. Metal fence stakes used on the Project site should be plugged with bolts or other plugging	During Project construction and activities	Project Applicant

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	materials to avoid this hazard. Fences should not have any slack that may cause wildlife entanglement.		
REC 9 – Data	Please report any special status species detected by completing and submitting CNDDB Online Field Survey Form . The City should ensure that the Project Applicant has submitted the data properly, with all data fields applicable filled out, prior to finalizing/adopting the environmental document. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred. The Project Applicant should provide CDFW with confirmation of data submittal.	Prior to finalizing CEQA document	City of Lancaster/ Project Applicant
REC 10 - MMRP	The MND’s proposed Biological Resources Mitigation Measures should be updated and conditioned to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. The City is welcome to coordinate with CDFW to further review and refine the Project’s mitigation measures.	Prior to finalizing CEQA document	City of Lancaster