



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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Governor's Office of Planning & Research

November 12, 2021

Nov 12 2021

Monique Garibay
City of Lancaster
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STATE CLEARINGHOUSE

Subject: Tentative Tract No. 61678/Conditional Use Permit No.20-05, Mitigated Negative Declaration, SCH #2021100193, City of Lancaster, Los Angeles County

Dear Ms. Garibay:

The California Department of Fish and Wildlife (CDFW) has reviewed an Initial Study/Mitigated Negative Declaration (MND), Joshua Tree Report, and Biological Resources Report from the City of Lancaster (City; Lead Agency) for the Tentative Tract No. 61678/Conditional Use Permit No. 20-05 Project (Project). The Project is proposed by Royal Investors Group, LLC (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 the development of a subdivision of 123 single-family residential lots on an approximately 25-acre parcel. The proposed Project would also include obtaining a conditional use permit to allow for smaller lot sizes with the provision of open space throughout the development. Lots would range between 5,000 square feet and 6,000 square feet. Approximately 2 acres of open space would be provided. Main access to the Project site would be from Avenue K. Streets within the subdivision would also be constructed for private residential use.

Location: The Project is located on the southeastern corner of Avenue K and 57th Street West in the City of Lancaster, Los Angeles County. The Project site is bounded by Avenue K to the north, vacant land to the east and south, and single-family homes and vacant land to the west. The Project location encompasses the following Assessor's Parcel Number (APN): 3204-009-002, 3204-009-007, 3204-009-044, 3204-009-045.

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 MND and Joshua Tree Report does not address the Project's impacts on the seedbank of western Joshua trees (*Yucca brevifolia*) within and adjacent to the Project site. Western Joshua trees is considered a candidate species for listing as threatened under CESA.

Specific impacts: The Project would remove 143 western Joshua trees and impact an undisclosed acreage of western Joshua tree seedbank. According to page 19 in the MND, "Given the presence of Joshua trees throughout the site and the nature of the proposed project, it is not likely that they can be saved in place. The Joshua trees on site would be directly impacted by future development."

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, 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 or bury living seeds in the soil, rendering living seeds inviable.

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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 2, which would require the Project Applicant to obtain an Incidental Take Permit (ITP) 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 morphological characteristics for individual western Joshua trees (e.g., flowers, number of flower panicles) that would be impacted;
- 3) An analysis of age structure of the individual western Joshua trees that would be impacted within the Project site (e.g., mature, seedling, juvenile);
- 4) An analysis of acres of western Joshua tree seedbank impacted;
- 5) A map showing where direct impacts on western Joshua trees and seedbank would occur relative to the Project's site plan;
- 6) A map showing where indirect impacts on western Joshua trees and seedbank would occur relative to the Project's site plan;
- 7) A discussion of whether the Project could have impact (direct and indirect) to any western Joshua trees adjacent to the Project site;
- 8) 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,
- 9) 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.

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Mitigation Measure #3: The Project Applicant should identify mitigation and mitigation lands prior to submitting an ITP application or during the ITP process. 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 65965-65968. 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. The MND and Joshua Tree Report does not provide any information on whether there would be impacts on 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 and seedbank that would be impacted;
- 4) Detailed description of all Project-related activities that would impact western Joshua trees; and
- 5) Direct and indirect impacts on western Joshua trees.

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.

Recommendation #3: CDFW does not recommend translocation of western Joshua trees. Successful transplanting of western Joshua trees is difficult to achieve and there is currently no scientific per reviewed evidence of a transplanting method that guarantees success. Furthermore, CDFW does not recognize transplanting as a sufficient form of mitigation but rather a minimization measure.

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Comment #2: Impacts on Burrowing Owls

Issue: Mitigation Measure 4 proposed in the MND may be insufficient to reduce impacts to burrowing owls to below a level of significance. Mitigation Measure 4 does not provide buffers or mitigation for potential loss of habitat supporting burrowing owls (*Athene cunicularia*), a California Species of Special Concern (SSC). In addition, no field survey has been conducted for burrowing owl presence or burrows on this Project site since 2018 which is out of date per CDFW standards.

Specific impacts: Project construction and activities may result in injury or mortality of burrowing owls and disrupt natural burrowing owl breeding behavior. Also, the Project may result in the permanent loss and degradation of 25 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: Burrowing owls (*Athene cunicularia*) are known to regularly occur throughout the Lancaster and Palmdale area. Nest and roost burrows of the burrowing owl are commonly dug by ground squirrels (*Citellus beecheyi*). According to page 20 of the MND, “[...] California ground squirrel burrows observed during the survey could provide potential cover sites for burrowing owls.” The Biological Resources Report noted that no burrowing owl were observed; however, the field survey was conducted in November 2018 and conducted outside of the recommended survey period for burrowing owl. No surveys for burrowing owls were performed in 2020 or 2021. It is possible that burrowing owls could have taken up residence in the Project site or use the Project site for breeding and nesting. The Project proceeding based on a false-negative could result in missed detections of burrowing owls and adverse impacts on burrowing owl habitat. Furthermore, the MND states that “[...] it is possible that nesting birds or burrowing owls could be present at the time that construction starts.”

Additionally, Mitigation Measure 4 does not propose 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 25 acres of habitat for burrowing owl. In California, threat factors affecting burrowing owl populations include habitat loss, degradation, and modification. Loss of 25 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;
- 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),

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that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2021b).

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 #4 by incorporating the underlined language and removing the language that has strikethrough:

"Burrowing owl protocol surveys shall be conducted by a qualified biologist on the Project site and within 100 feet (minimum) of the Project site where there is suitable habitat. Surveys for burrowing owls shall adhere to survey methods described in CDFW's March 7, 2012, Staff Report on Burrowing Owl Mitigation prior to the City issuing construction permits (CDFW 2012), on the project site within 14 days of the start of construction/ground disturbing activities in accordance with establish burrowing owl protocols. If burrowing owls are identified utilizing the project site during the surveys, the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. 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 utilizing the Project site during the surveys, ~~the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements~~ 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:

- 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

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- 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 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 endowment to provide for the long-term management of mitigation lands.

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

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

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

Specific Impacts: The Project would develop approximately 25 acres of undeveloped land. The Project would eliminate habitat that supports a western Joshua tree woodland community, habitat that potentially supports burrowing owls, and habitat for nesting birds.

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. According to page 22 of the MND, the Biological Impact Fee would “[...] offset the cumulative loss of biological resources in the Antelope Valley as a result of development. Therefore, no impacts would occur.” The MND does not explain 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;

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- 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.

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.

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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/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,
- i) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.

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)].

Additional Recommendations

Biological Resources Report. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Since the biological survey took place on November 6, 2018, CDFW strongly recommends conducting an updated biological survey to account for the current state of the Project site and the inventory of biological species that may be present. The survey should be conducted at the appropriate time of year and time of day when sensitive species are active or otherwise identifiable for both wildlife and plants.

Nesting birds. During the field survey for western Joshua trees, it was noted in the Joshua Tree Report that, "Six inactive nests were observed within the Joshua trees present on-site."

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CDFW recommends the City revise Mitigation Measure #5 by incorporating the underlined language and removing the language that has strikethrough:

"To protect nesting birds and raptors that may occur on site or adjacent to the Project site, construction activities should not occur from February 15 through September 15. If construction activities must occur between February through September 15, a nesting bird survey shall be conducted by a qualified biologist on the project site within 14 days of 7 days prior to the start of construction activities. Surveys will include all potential nesting areas within a 500-foot radius of the Project site. If Project activities are delayed or suspended for more than 7 days during the breeding season, surveys will be repeated before activities can begin or restart."

"In the event that nesting birds or raptors are utilizing the project site, all work in the area shall cease until a qualified biologist determines that young birds have fledged. an appropriate buffer shall be established around the nest until the fledglings have left the nest. Impacts to nests shall be avoided by delay of work or establishing a buffer of 300 feet around active passerine (perching birds) and songbird nests, A minimum of 500 feet shall be established around active non-listed raptor nests, and 0.5 miles 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. and 50 feet around all other nests unless these distances are modified by the California Department of Fish and Wildlife."

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 2021c). 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.

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 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

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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 Julisa Portugal, Environmental Scientist, at Julisa.Portugal@wildlife.ca.gov or (562) 330-7563.

Sincerely,

DocuSigned by:



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Victoria Tang signing for

Erinn Wilson-Olgin
Environmental Program Manager I
South Coast Region

cc: CDFW

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

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Attachment A: Draft Mitigation and Monitoring Reporting Plan

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

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 (ITP) 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 morphological characteristics for individual western Joshua trees (e.g., flowers, number of flower panicles) that would be impacted; 3) An analysis of age structure of the individual western Joshua trees that would be impacted within the Project site (e.g., mature, seedling, juvenile); 4) An analysis of acres of western Joshua tree seedbank impacted; 5) A map showing where impacts on western Joshua trees and seedbank would occur relative to the Project's site plan; 	Prior to the City issuing a construction related permits	City of Lancaster/Project Applicant

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	<ul style="list-style-type: none"> 6) A map showing where indirect impacts on western Joshua trees and seedbank would occur relative to the Project's site plan; 7) A discussion of whether the Project could have an impact (direct and indirect) to any western Joshua trees adjacent to the Project site; 8) A map showing the alliance and/or association-based plant communities in the Project site following the Manual of California Vegetation (MCV), second edition; and, 9) Photographs of the Project site, including a minimum two photographs per acre depicting different aspects, and a photograph documenting each western Joshua tree. 		
MM-BIO-2 – Impacts Western Joshua Tree – Replacement Habitat	<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> <ul 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. 	Prior to the City issuing a construction related permits	City of Lancaster/ Project Applicant
MM-BIO-3 – Impacts Western Joshua Tree – Compensatory Mitigation	<p>The Project Applicant shall identify mitigation and mitigation lands prior to submitting an ITP application or during the ITP process. 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</p>	Prior to submitting an ITP application or during the ITP process/	Project Applicant

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	<p>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 endowment funds shall be fully acquired, established, transferred, or otherwise executed prior to impacts on western Joshua trees.</p>	Prior to impacts on western Joshua trees	
MM-BIO-4 – Burrowing Owls – Surveys	<p>Burrowing owl protocol surveys shall be conducted by a qualified biologist on the Project site and within 100 feet (minimum) of the Project site where there is suitable habitat. Surveys for burrowing owls shall adhere to survey methods described in CDFW's March 7, 2012, Staff Report on Burrowing Owl Mitigation prior to the City issuing construction permits (CDFW 2012). 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 utilizing the project site 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</p>	Prior to the City issuing any construction related permits	City of Lancaster/ Project Applicant

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	<p>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> <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-5 – 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 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 endowment to provide for the long-term management of mitigation lands.	Prior to ground disturbing activities and vegetation removal	Project Applicant
MM-BIO-6 – Impacts on Burrowing Owls – Rodenticides	The Project Applicant shall not use any rodenticides and second-generation anticoagulant rodenticides during Project activities.	During Project activities	Project Applicant

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REC 1 – Western Joshua Tree Impacts	<p>The City should revise the final 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. The MND and Joshua Tree Report does not provide any information on whether there would be impacts on 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 and seedbank would be impacted; 4) Detailed description of all Project-related activities that would impact western Joshua trees; and 5) Direct and indirect impacts on western Joshua trees. 	Prior to finalizing CEQA document	City of Lancaster
REC 2 – Western Joshua Tree Take Authorization	<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>	Prior to finalizing CEQA document CESA ITP Pre-Consultation	City of Lancaster/ Project Applicant

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REC 3 – Translocation of western Joshua trees	CDFW does not recommend translocation of western Joshua trees. Successful transplanting of western Joshua trees is difficult to achieve and there is currently no scientific peer-reviewed evidence of a transplanting method that guarantees success. Furthermore, CDFW does not recognize transplanting as a sufficient form of mitigation but rather a minimization measure.	During Project Activities	Project Applicant/ City of Lancaster
REC 4 – Biological Impact Fee	<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, i) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project. 	Prior to finalizing CEQA document	City of Lancaster
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	Prior to finalizing CEQA document	City of Lancaster

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	<p>to offset the Project's impacts. Also, the MND should provide specific performance standards, as well as actions to achieve those performance standards.</p>		
REC 6 – Recirculate CEQA Document	<p>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.</p>	Prior to finalizing CEQA document	City of Lancaster
REC 7 – Biological Resources Report	<p>CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Since the biological survey took place on November 6, 2018, CDFW strongly recommends conducting an updated biological survey to account for the current state of the Project site and the inventory of biological species that may be present. The survey should be conducted at the appropriate time of year and time of day when sensitive species are active or otherwise identifiable for both wildlife and plants.</p>	Prior to finalizing CEQA document	City of Lancaster
REC 8 – Nesting Bird Survey and Buffers	<p>To protect nesting birds and raptors that may occur on site or adjacent to the Project site, construction activities should not occur from February 15 through September 15. If construction activities must occur between February through September 15, a nesting bird survey shall be conducted by a qualified biologist on the project site 7 days prior to the start of construction activities. Surveys will include all potential nesting areas within a 500-foot radius of the Project site. If Project 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>	Prior and during Project activities	Project Applicant

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	In the event that nesting birds or raptors are utilizing the project site, all work in the area shall cease until a qualified biologist determines that young birds have fledged. Impacts to nests shall be avoided by delay of work or establishing a buffer of 300 feet around active passerine (perching birds) and songbird nests, 500 feet around active non-listed raptor nests, and 0.5 miles 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.		
REC 9 – Data	Please report any special status species detected by completing and submitting CNDDDB 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