



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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GAVIN NEWSOM, Governor
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SENT BY EMAIL ONLY

March 14, 2022

Cynthia Campana
City of Lancaster
44933 Fern Avenue
Lancaster, CA 93534
CCampana@cityoflanasterca.org

**Subject: Vesting Tentative Tract Map No. 61817, Mitigated Negative Declaration,
City of Lancaster, Los Angeles County**

Dear Ms. Campana:

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 Vesting Tentative Tract Map No. 61817 (Project). The Project is proposed by the Pacific Communities Builder, Inc. (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 subdivision of approximately 38 acres of vacant land into 150 single-family residential lots. The residential lots will range from 7,083 square feet to 15,614 square feet. In addition, private roads and utilities will be installed throughout the Project site.

Location: The Project is located on approximately 38 acres in the northeast corner of 15th Street East and East Avenue H-8, in the City of Lancaster, Los Angeles County. The Project site is bounded by vacant land to the north and west, vacant land and residential development to the south, and residential development to the east. The Project site include Assessor's Parcel Number 3176-020-049, 3176-020-056, and 3176-020-057.

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 to Mohave Ground Squirrel (*Xerospermophilus mohavensis*)

Issue: The Project proposed could impact habitat for Mohave ground squirrel, a threatened CESA-listed species. The MND does not propose avoidance and minimization measures to reduce impacts to below a level of significance.

Specific Impacts: Project activities may result in mortality or injury to Mohave ground squirrel and potentially impact their habitat resulting to further decline within the range for this species.

Why Impacts would occur: Mohave ground squirrels have been documented historically to occur within the Antelope Valley region. According to the [California Natural Diversity Database](#) (CNDDDB), Mohave ground squirrels have been observed within two miles southeast of the Project site (CDFW 2022a). The Biological Resources Report (BRR) noted that spiny hop-sage plants (*Grayia spinosa*) were observed on the Project site. Spiny hop-sage have been utilized by this species and has potential to provide habitat for Mohave ground squirrel. The BRR further stated that although there is potential habitat, no Mohave ground squirrel were observed during the field survey. However, the field survey was conducted in December 2004, which is considered outdated and outside of the recommended survey period. Given these conditions, it is possible that Mohave ground squirrel could have taken up residence in the Project site since the field survey. Although there is potential species presence and habitat, the MND does not propose avoidance and minimization measures to reduce impacts to Mohave ground squirrel. Project activities proceeding based on a false negative and with no avoidance measures could result in potential injury or mortality of this species and loss of habitat.

Evidence impact would be significant: Project construction may result in an adverse effect, either directly or through habitat modifications, on any species identified as a candidate,

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sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS.

Recent survey results identify the Project site within the boundary of the Mohave ground squirrel range (Leitner 2018). The Mohave ground squirrel has a restricted geographic range in the western Mojave Desert, where it has suffered from habitat loss as a result of conversion or degradation of native vegetation for residential, industrial, and energy-related developments, agriculture, recreation, and other human uses. On-going development plans, including residential, industrial, energy-related, agricultural, and recreational projects, present a serious threat to remaining Mohave ground squirrel populations (CDFW 2010).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Mohave ground squirrel surveys should be conducted wherever the Project is taking place in appropriate habitat within the range of Mohave ground squirrel. Focused Mohave ground squirrel surveys should follow the [California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines](#) (CDFW 2003). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent should secure an Incidental Take Permit (ITP) for Mohave ground squirrel before ground/vegetation disturbance activities commence. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW approved location and mitigation ratio.

If a survey conducted according to CDFW guidelines results in no capture or observation of Mohave ground squirrel on a Project site, this is not necessarily evidence that the Mohave ground squirrel does not exist on the site or that the site is not actual or potential habitat of the species. However, in the circumstance of such a negative result, the CDFW may stipulate that the Project site harbors no Mohave ground squirrel. This stipulation would expire one year from the ending date of the last trapping on the Project site conducted according to these guidelines. However, if Mohave ground squirrel or other listed species are discovered on the Project site, avoiding take of a listed species and or securing authorization for incidental take of a listed species pursuant to Fish and Game Code Section 2081(b) *et seq.* remains the responsibility of the Project proponent.

Mitigation Measure #2: The City may choose to forgo focused Mohave ground squirrel presence/absence surveys and assume presence of Mohave ground squirrel on site. Under this option, an ITP should be obtained for Mohave ground squirrel prior to ground/vegetation disturbance activities. The Project should mitigate for temporary and/or permanent impacts to Mohave ground squirrel habitat as specified in conditions of the ITP through habitat acquisition at a CDFW approved location and mitigation ratio.

Comment #2: Impacts to Swainson's Hawk (*Buteo swainsoni*)

Issue: CDFW is concerned that the Project could impact habitat for Swainson's Hawk, a threatened CESA-listed species.

Specific Impacts: Project construction and activities may result in injury or mortality of Swainson's hawk. The Project will result in loss of potential breeding and/or foraging habitat for Swainson's hawk.

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Why impacts would occur: Swainson's hawk are generally found in the Central Valley but have also been documented foraging in Palmdale and Lancaster areas. This raptor species prefers open spaces, open grasslands, pastures, and agricultural land (CDFW 2022c). Based on aerial imagery, the Project site is an open space with sparse vegetation and provides potential foraging habitat. According to the CNDDDB, Swainson's hawk have been documented within two miles southwest of the Project site (CNDDDB 2022a). Furthermore, four observations of Swainson's hawk within the City of Lancaster have been documented through [iNaturalist](#) (iNaturalist 2022). Although there is a potential for Swainson's hawk to be observed within or near the Project site, the MND does not provide avoidance measures to minimize the impacts to Swainson's hawk. Aside from no avoidance measures in the MND, no protocol-level focused survey was conducted for Swainson's hawk presence. If a protocol-level Swainson's hawk survey was conducted, there is potential that species presence may be observed. Project activities without pre-construction surveys could result in injury or mortality of unidentified Swainson's hawk. Lastly, Project construction activities will result in loss of habitat if Swainson's hawk are present.

Evidence impact would be significant: Consistent with CEQA Guidelines, Section 15380, the status of the Swainson's hawk as a threatened species under CESA qualifies it as an endangered, rare, or threatened species under CEQA. The estimated historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20th century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016). CDFW considers a Swainson's hawk nest site to be active if it was used at least once within the past five years and impacts to suitable habitat or individual birds within a five-mile radius of an active nest as significant. Based on the foregoing, Project impacts would potentially reduce the number and/or restrict the range of Swainson's hawk or contribute to the abandonment of an active nest and/or the loss of significant foraging habitat for a given nest territory and thus result in "take" as defined under CESA.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #3: CDFW released guidance for this species entitled [Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California](#) (CEC 2010). CDFW recommends conducting focused surveys for Swainson's hawk following the 2010 guidance and disclosing the results in the Project's final environmental documentation.

Mitigation Measure #4: If "take" of Swainson's hawk would occur from Project construction or operation, CESA authorization [(i.e., ITP)] would be required for the Project. CDFW may consider the Lead Agency's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.

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Mitigation Measure #5: Permanent impacts to foraging habitat for Swainson's hawk should be offset by setting aside replacement acreage to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity.

Mitigation Measure #6: To protect nesting birds that may occur on the Project site or adjacent to the Project boundary, CDFW recommends that no construction should occur from February 15 (January 1 for raptors) through August 31 unless a qualified biologist completes a survey for nesting bird activity within a 500-foot radius of the construction site. Based on local conditions, the nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. CDFW recommends the Lead Agency require surveys be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project related activity likely to impact raptors and migratory songbirds, for the entire Project site. If Project activities are delayed or suspended for more than 7 days during the breeding season, repeat the surveys. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented: 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests and 0.5 mile around active listed bird nests.

These buffers should 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.

Comment #3: Impacts on Burrowing Owls (*Athene cunicularia*)

Issue: The MND does not propose avoidance or mitigation measures to reduce impacts to burrowing owls to below a level of significance. In addition, no field survey has been conducted for burrowing owl presence or burrows on the Project site since 2004.

Specific impacts: Project construction and activities may result in injury or mortality of burrowing owls and disrupt natural burrowing owl breeding behavior. The Project may also result in the permanent loss and degradation of 38 acres of breeding, wintering, and/or 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 impact would occur: Burrowing owls are yearlong residents of open, dry grassland, and desert habitats. Burrowing owls are known to regularly occur within the Antelope Valley region. The Biological Resources Report (BRR) noted that no burrowing owl were observed; however, the field survey was conducted in December 2004, which is considered outdated and outside of the recommended survey period for burrowing owl. Additionally, BRR further stated that burrowing owls, "... have been observed within the surrounding areas and could potentially occur on the site in the future." Moreover, CNDDDB has recorded burrowing owl observations within three miles of the Project site (CDFW 2022a). It is possible that burrowing owls occupy 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. Lastly, habitat loss of 38 acres could result in local extirpation of the species and contribute to local, regional, and State-wide declines of the species.

Evidence impact 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

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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), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2022d).

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 Project and environmental document should be conditioned to avoid and/or mitigate for potential impacts to burrowing owl and habitat if burrowing owls are present. 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 #7: CDFW recommends the City perform a protocol-level survey for burrowing owls adhering to survey methods described in CDFW's March 7, 2012, [Staff Report on Burrowing Owl Mitigation](#) (CDFW 2012). Burrowing owl protocol surveys should be conducted by a qualified biologist on the Project site and within 100 feet (minimum) of the Project site where there is suitable habitat. In California, the burrowing owl breeding season extends From February 1 to August 31 with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct four survey visits: 1) at least one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15. If burrowing owls are identified, the applicant should prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project Applicant should contact CDFW to develop appropriate mitigation/management procedures. The applicant should submit a final Burrowing Owl Mitigation Plan to the City prior to the City issuing construction permits.

Mitigation Measure #8: 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

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

Comment #4: Inadequate Disclosure of Adequacy of a 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 38 acres of undeveloped land. The Project would eliminate habitat that potentially supports burrowing owls, Swainson's hawk, Mohave ground squirrel, and additional wildlife.

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 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;
- 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,

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- § 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; and threaten to eliminate a plant or animal community [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 United States Fish and Wildlife Service (USFWS).

Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #1: 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 #2: 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)].

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Mitigation Measure #10: 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).

Additional Recommendations

Updated Biological Resources Report. The Biological Resource Report for this Project is based on field surveys performed on December 6 and 7, 2004. 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. In addition, it is possible that wildlife not previously observed on site are now residents and/or use the Project site for breeding, nesting, or foraging. For these reasons, CDFW strongly recommends the City require the Project Applicant to retain a qualified biologist to perform 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. The updated biological report should be disclosed in the CEQA document for public review.

Landscaping. The Project proposes a residential development which may result in landscaping throughout the Project site. CDFW recommends the Project Applicant use only native species found in naturally occurring vegetation communities within or adjacent to the Project site. The Project Applicant should not plant, seed, or otherwise introduce non-native, invasive plant species to areas that are adjacent to and/or near native habitat areas. Accordingly, CDFW recommends the City restrict use of any species, particularly 'Moderate' or 'High' listed by the [California Invasive Plant Council](#) (Cal-IPC 2022). These species are documented to have substantial and severe ecological impacts on physical processes, plant and animal communities, and vegetation structure.

Data. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., California Natural Diversity Database] 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 [CNDDB Online Field Survey Form](#) (CDFW 2022e). The

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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 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
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ec: CDFW

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



Attachment A: Draft Mitigation and Monitoring Reporting Plan

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 – Mohave Ground Squirrel Survey	<p>Mohave ground squirrel surveys shall be conducted wherever the Project is taking place in appropriate habitat within the range of Mohave ground squirrel. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines. If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall secure an Incidental Take Permit (ITP) for Mohave ground squirrel before ground/vegetation disturbance activities commence. The ITP shall specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW approved location and mitigation ratio.</p> <p>If a survey conducted according to CDFW guidelines results in no capture or observation of Mohave ground squirrel on a Project site, this is not necessarily evidence that the Mohave ground squirrel does not exist on the site or that the site is not actual or potential habitat of the species. However, in the circumstance of such a negative result, the CDFW may stipulate that the Project site harbors no Mohave ground squirrel. This stipulation would expire one year from the ending date of the last trapping on the Project site conducted according to these guidelines. However, if Mohave ground squirrel or other listed species are discovered on the Project site, avoiding take of a</p>	<p>Prior to finalizing CEQA document and Project Activities</p>	<p>City of Lancaster/ Project Applicant</p>

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	listed species and or securing authorization for incidental take of a listed species pursuant to Fish and Game Code Section 2081(b) <i>et seq.</i> remains the responsibility of the Project proponent.		
MM-BIO-2 – Incidental Take Permit	The City may choose to forgo focused Mohave ground squirrel presence/absence surveys and assume presence of Mohave ground squirrel on site. Under this option, an ITP shall be obtained for Mohave ground squirrel prior to ground/vegetation disturbance activities. The Project shall mitigate for temporary and/or permanent impacts to Mohave ground squirrel habitat as specified in conditions of the ITP through habitat acquisition at a CDFW approved location and mitigation ratio.	Prior to commencing Project Activities	City of Lancaster/ Project Applicant
MM-BIO-3 – Swainson’s Hawk Survey	CDFW released guidance for this species entitled Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California . CDFW recommends conducting focused surveys for Swainson’s hawk following the 2010 guidance and disclosing the results in the Project’s final environmental documentation.	Prior to finalizing CEQA document and Project Activities	City of Lancaster/ Project Applicant
MM-BIO-4 – Swainson’s Hawk Incidental Take Permit	If “take” of Swainson’s hawk would occur from Project construction or operation, CESA authorization [(i.e., ITP)] shall be required for the Project. CDFW may consider the Lead Agency’s CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to state-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of state-listed species.	Prior to finalizing CEQA document and Project Activities	City of Lancaster/ Project Applicant
MM-BIO-5 – Swainson’s Hawk Mitigation	Permanent impacts to foraging habitat for Swainson’s hawk shall be offset by setting aside replacement acreage to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity.	Prior to finalizing CEQA document and Project activities	Project Applicant

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<p>MM-BIO-6 – Nesting Bird Survey</p>	<p>To protect nesting birds that may occur on the Project site or adjacent to the Project boundary, CDFW recommends that no construction shall occur from February 15 (January 1 for raptors) through August 31 unless a qualified biologist completes a survey for nesting bird activity within a 500-foot radius of the construction site. Based on local conditions, the nesting bird surveys shall be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. CDFW recommends the Lead Agency require surveys be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project related activity likely to impact raptors and migratory songbirds, for the entire Project site. If Project activities are delayed or suspended for more than 7 days during the breeding season, repeat the surveys. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented: 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests and 0.5 mile around active listed bird nests.</p> <p>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.</p>	<p>Prior to finalizing CEQA document and Project Activities</p>	<p>City of Lancaster/ Project Applicant</p>
<p>MM-BIO-7 - Burrowing Owl Survey</p>	<p>CDFW recommends the City perform a protocol-level survey for burrowing owls adhering to survey methods described in CDFW's March 7, 2012, Staff Report on Burrowing Owl Mitigation. 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. In California, the burrowing owl breeding season extends From February 1 to August 31 with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct four survey visits: 1) at least one site visit between February 15 and April</p>	<p>Prior to finalizing CEQA document and Project Activities</p>	<p>City of Lancaster/ Project Applicant</p>

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	15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15. If burrowing owls are identified, the applicant shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project Applicant shall contact 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.		
MM-BIO-8 – Burrowing Owl Mitigation	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 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 finalizing CEQA document and Project Activities	City of Lancaster/ Project Applicant
MM-BIO-9 - Rodenticides	CDFW recommends that the City require the Project Applicant to avoid using any rodenticides and second-generation anticoagulant rodenticides during Project activities.	Prior to finalizing CEQA document and Project Activities	City of Lancaster/ Project Applicant
MM-BIO-10 – Biological Impact Fee	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: <ol 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 	Prior to finalizing CEQA document and Project Activities	City of Lancaster

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	<p>Fee protect/conserve;</p> <ul style="list-style-type: none"> 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. <p>The MND shall provide any technical data, maps, plot plans, diagrams, and similar relevant information in addressing these concerns (CEQA Guidelines, §15147).</p>		
<p>MM-BIO-11 – Updated Biological Resources Report</p>	<p>The Biological Resource Report for this Project is based on field surveys performed on December 6 and 7, 2004. 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. In addition, it is possible that wildlife not previously observed on site are now residents and/or use the Project site for breeding, nesting, or foraging. For these reasons, CDFW strongly recommends the City require the Project Applicant to retain a qualified biologist to perform 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 shall 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. The updated biological report should be disclosed in the CEQA document for public review.</p>	<p>Prior to finalizing CEQA document and Project Activities</p>	<p>City of Lancaster/ Project Applicant</p>
<p>REC 1- Biological Impact Fee Discussion</p>	<p>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</p>	<p>Prior to finalizing CEQA document</p>	<p>City of Lancaster</p>

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	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.	and Project Activities	
REC 2- Recirculate MND	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)].	Prior to finalizing CEQA document and Project Activities	City of Lancaster
REC 3 - Landscaping	CDFW recommends the Project Applicant use only native species found in naturally occurring vegetation communities within or adjacent to the Project site. The Project Applicant should not plant, seed, or otherwise introduce non-native, invasive plant species to areas that are adjacent to and/or near native habitat areas. Accordingly, CDFW recommends the City restrict use of any species, particularly 'Moderate' or 'High' listed by the California Invasive Plant Council . These species are documented to have substantial and severe ecological impacts on physical processes, plant and animal communities, and vegetation structure.	Prior to and during Project activities	Project Applicant
REC 4 – 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

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REC 5 - 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
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