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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



Via Electronic Mail Only

September 8, 2022

Mitzi Alvarado  
City of Lancaster  
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**Subject: Mitigated Negative Declaration for Tentative Tract Map No. 61600/Variance 22-02, SCH #2022080385, City of Lancaster, Los Angeles County**

Dear Ms. Alvarado:

The California Department of Fish and Wildlife (CDFW) has reviewed a Mitigated Negative Declaration (MND) from the City of Lancaster (City) for Tentative Tract Map No. 61600/Variance 22-02 (Project). CDFW appreciates the opportunity to provide comments regarding aspects of the Project that could affect fish and wildlife resources and be subject to CDFW's regulatory authority under the Fish and Game Code.

### **CDFW's Role**

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish & G. Code, §§ 711.7, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect State fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 *et seq.*). Likewise, to the extent implementation of the Project as proposed may result in "take", as defined by State law, of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, § 1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 2 of 18

## Project Description and Summary

**Objective:** The Project proposes to subdivide approximately 6.87 acres into 31 single-family lots. The lots would range in size from 7,000 square feet to 11,759 square feet. Access into the subdivision would be provided from 59<sup>th</sup> Street West. The Project would include a variance to reduce the required lot depth from 100 feet to a minimum of 94 feet.

**Location:** The Project is located at the northwest corner of 59<sup>th</sup> Street West and Avenue K-14. The Project site includes Assessor Parcel Number 3204-006-084, 3204-006-090, and 3204-006-091. The Project site is surrounded by residential development to the north, west, and southwest. An existing stormwater retention basin is located adjacent to the southeastern boundary of the Project site. The eastern boundary of the Project site is a dirt road and disturbed desert scrub habitat.

## Comments and Recommendations

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

### Specific Comments

#### Comment #1: Impacts on Western Joshua Tree

**Issue:** The Project may continue to have a significant on western Joshua tree (*Yucca brevifolia*), a candidate species for listing under CESA.

**Specific impacts:** Within the 10-acre Project site, the Project would remove one western Joshua tree and potentially impact an undisclosed acreage of western Joshua tree seedbank. In addition, based on Figure 1 in the MND showing the Project site, the Project could impact western Joshua trees east of the Project site.

**Why impact would occur:** According to the Biological Resource Assessment for the Project, within the 10-acre Project site, there is one western Joshua tree that is more than 12 feet tall. There are three smaller trees within three meters of the main trunks of the larger tree. Those three trees are two, five, and seven feet tall. The Project would need to remove western Joshua trees on site in order to construct the new subdivision. In addition, grading and soil compaction on site could crush and/or bury living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

There are western Joshua trees immediately east of the Project site (less than 50 feet) in the undeveloped parcel. Those western Joshua trees and seedbank could be impacted by the Project as a result of Project site access and construction. Access and construction occurring adjacent to western Joshua trees in the off-site parcel could impact western Joshua trees and seedbank as a result of ground disturbance (e.g., excavation, vegetation removal, grading, and

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 3 of 18

earth-moving activities); encroachment, compaction, trampling, or disturbance of the root zone and seedbank by heavy equipment, vehicles, or foot traffic; and increased dust, water, and wind erosion during construction. In addition, any permanent changes to on-site hydrology, such as increased impervious surfaces and surface runoff, could potentially result in permanent impacts on western Joshua trees, seedbank, and habitat if the surface runoff from within the Project site flows into off-site areas.

Finally, new perimeter walls or fencing, sidewalks, roads, or other structures along the east side of the Project site could require western Joshua trees to be removed or cut; encroaching onto western Joshua trees, root zones, and seedbank; as well as completely or partially shade western Joshua trees. Shade could affect photosynthesis and recruitment of western Joshua tree seedlings.

**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.*). 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 2022a). 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). Impacts on western Joshua tree requires a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065).

The MND provides measures to mitigate for the Project's impact on western Joshua trees on the 10-acre Project site. However, the Project's impact on western Joshua trees has yet to be mitigated below a level of significance. In addition, measures have yet to be provided to fully avoid impacts on western Joshua trees adjacent to the Project site. Accordingly, the Project continues to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status species by CDFW.

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

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

**Recommendation #2:** CDFW concurs with Mitigation Measure #2 in the MND, which would require the Project Applicant to obtain an Incidental Take Permit from CDFW for incidental take of western Joshua trees. The Project Applicant should submit an Incidental Take Permit Application to CDFW that provides the following information (at a minimum):

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 4 of 18

- 1) An analysis of individual western Joshua trees (clonal and non-clonal) and western Joshua tree seedbank that would be impacted both within the Project site and within 300 feet of the Project site;
- 2) An analysis of the acres of natural communities supporting western Joshua trees that would be impacted both within the Project site and within 300 feet of the Project site provided according to alliance and/or association-based natural community names. The [Manual of California Vegetation](#) (MCV) should be used to inform this mapping and assessment as well as CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities](#) (CDFW 2018).
- 3) A map of the Project's site plan overlaid on location of western Joshua trees and natural communities; and,
- 4) A hydrologic analysis of how water would be transported across the Project site and adjacent areas after Project build-out.

**Mitigation Measure #1:** The Project Applicant should provide compensatory mitigation for the Project's impact on western Joshua trees at no less than 2:1, or as required in an Incidental Take Permit for western Joshua trees issued by CDFW.

**Mitigation Measure #2:** The Project Applicant should fully avoid impacts on western Joshua trees off site. The Project Applicant should implement a minimum 300-foot buffer. Temporary protective fencing and signage should be installed to demarcate the 300-foot buffer. No work or access should occur within the buffer. The temporary fencing should be removed only after all Project construction is complete. If the Project Applicant is unable to avoid impacts on western Joshua trees off site, the Project Applicant should also obtain take authorization for those off-site western Joshua trees.

### **Comment #2: Impacts on Tricolored Blackbird (*Agelaius tricolor*)**

**Issue:** The Project may a significant impact on tricolored blackbird (*Agelaius tricolor*), a CESA-listed species.

**Specific impacts:** Project construction and activities may disrupt tricolored blackbird breeding behavior, resulting in reduce reproductive capacity.

**Why impacts would occur:** Based on a review of the California Natural Diversity Database (CNDDDB), tricolored blackbird was observed adjacent to the Project site within the existing stormwater retention basin (CDFW 2011). Project construction would require ground-disturbance (e.g., excavation, grading, and earth-moving activities) and vegetation removal, both using heavy equipment. These activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance. These activities occurring near tricolored blackbird nesting sites result in reduced reproductive capacity and cause tricolored blackbirds to abandon their nests, resulting in the loss of fertile eggs or nestlings.

**Evidence impact would be significant:** The tricolored blackbird is 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). Impacts on tricolored blackbird requires a mandatory finding of significance under CEQA (CEQA Guidelines, § 15065). The Project's CEQA

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 5 of 18

document does not provide a discussion or disclosure as to the Project's potential impacts on tricolored blackbird, nor does the Project's CEQA document provide potentially feasible measures to mitigate for potential impacts on tricolored blackbird. Accordingly, the Project continues to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status species by CDFW.

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

**Recommendation #3:** CDFW recommends the City revise the Project's CEQA document to provide a discussion of the Project's potential impact on tricolored blackbird. Conclusions made as to habitat quality and suitability should be substantiated by scientific and factual data, which may include maps, diagrams, and similar relevant information sufficient to permit full assessment of significant impacts by reviewing agencies. Potential direct and indirect impacts on tricolored blackbird should be discussed. If the Project would impact tricolored blackbird, the Project's CEQA should provide measures to avoid and/or mitigate potential impacts to tricolored blackbird as well as habitat supporting the species.

The Project may require take authorization from CDFW for impacts to western Joshua tree and potentially tricolored black bird. As a reminder, revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an Incidental Take Permit for the Project unless the Project's CEQA document addresses all the Project's impact on CESA endangered, threatened, and/or candidate species. It is important that the take proposed to be authorized by CDFW's Incidental Take Permit be described in detail in the Project's CEQA document.

**Recommendation #4:** If the Project would impact tricolored blackbird, the impact would be significant under CEQA. Accordingly, CDFW recommends the City recirculate the Project's CEQA document for public review and commenting prior to finalizing the Project's CEQA document. Pursuant to CEQA Guidelines section 15073.5, "a lead agency is required to recirculate a negative declaration when the document must be substantially revised [...] a substantial revision of the negative declaration shall mean a new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance [...]"

**Mitigation Measure #3:** The Project Applicant should retain a qualified biologist to survey the stormwater detention basin and where suitable habitat occurs, as access allows, for tricolored blackbird and habitat. The Project Applicant should submit a report, including negative findings, to the City prior to issuance of any construction or grading permits.

**Mitigation Measure #4:** If tricolored blackbird is present, the Project should fully avoid impacts by avoiding any Project-related construction and activities during the bird nesting season from February 15 through September 15.

**Mitigation Measure #5:** If tricolored blackbird is present and the Project cannot fully avoid impacts, the Project Applicant should consult with CDFW on appropriate take authorization. If an Incidental Take Permit is required from CDFW, a copy of the Incidental Take Permit should be provided to the City prior to the issuance of any construction or grading permits.

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 6 of 18

### **Comment #3: Impacts on Burrowing Owl**

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

**Specific impacts:** Project construction and activities may result in injury or mortality of burrowing owls, disrupt natural burrowing owl breeding behavior, and reduce reproductive capacity. Also, the Project may result in the permanent loss of 10 acres of breeding, wintering, and foraging habitat for the species. Habitat loss could result in local extirpation of the species and contribute to local, regional, and State-wide declines of the species.

**Why impacts would occur:** The Biological Resource Assessment states that “while no burrowing owls were observed on the project site, it is possible that burrowing owls and other nesting birds could occupy the project site prior to the start of construction.” Project construction would require ground-disturbance (e.g., excavation, grading, and earth-moving activities) and vegetation removal, both using heavy equipment. These activities create elevated levels of noise, human activity, dust, ground vibrations, and vegetation disturbance. These activities occurring near potential wintering sites could flush burrowing owls, cause burrowing owls to abandon their burrow, and reduce the likelihood of winter survival. In addition, these activities occurring near potential nests could result in reduced reproductive capacity and cause burrowing owls to abandon their nests, resulting in the loss of fertile eggs or nestlings. Project-related impacts on burrowing owl during the wintering and breeding seasons, which includes potential populations in undeveloped land adjacent to the Project site, could cause local burrowing owl declines because of increased burrowing owl mortalities due to increased stress and injury, reproductive suppression, and loss of young.

If burrowing owl occupy the Project site prior to the start of construction, then build out of the Project would result permanent loss and degradation of 10 acres of breeding, wintering, and foraging habitat for burrowing owl. In the Antelope Valley, burrowing owl populations have experienced dramatic declines due to widespread habitat loss and habitat fragmentation, resulting from the conversion of grassland and desert scrub habitat to urban and suburban areas (e.g., expanding residential grown, solar) (ICF 2019). Habitat loss can result in the elimination of individuals or populations of burrowing owls from the area that is converted, and burrowing owl can also be affected by proximity to converted lands from pollution and trampling (ICF 2019). Loss of 10 acres of potential habitat for burrowing owl could result in local extirpation of the species and contribute to local, regional, and State-wide declines of the species.

The Project may have a cumulatively considerable effect on burrowing owl due to habitat loss. “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects [Pub. Resources Code, § 21083(b)]. The conversion of habitat to development around the Project and within the City would result in incremental loss of habitat. This could potentially reduce the number or restricting the range of burrowing owl both locally and regionally.

The MND provides measures to mitigate for the Project’s impact on burrowing owl. However, the mitigation currently proposed may not be effective. First, measures have yet to be provided

Mitzi Alvarado  
 City of Lancaster  
 September 8, 2022  
 Page 7 of 18

to compensate for loss of habitat, including cumulative loss of habitat, if burrowing owls occupy the Project site prior to the start of construction. Second, the Project's MND proposes a buffer zone of at least 50 feet around occupied burrows during the nesting season in order to protect breeding pairs, females, or offspring. The proposed buffer zone of 50 feet is far below the recommendation provided in the [Staff Report on Burrowing Owl Mitigation](#) (CDFW 2012). A 50-foot buffer may not be sufficient to avoid impacts on burrowing owls during the breeding season.

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

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

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's impact on burrowing owl has yet to be mitigated below a level of significance. Accordingly, the Project continues to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status species by CDFW.

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

**Mitigation Measure #6:** CDFW recommends the City expand on Mitigation Measure #3 by incorporating the following underlined language:

"The applicant shall retain a qualified biologist who shall conduct burrowing owl protocol surveys on the project site in accordance with the procedures established by the California Department of Fish and Wildlife in the Staff Report on Burrowing Owl Mitigation prior to the start of construction/ground disturbing activities. Protocol surveys shall be conducted on the Project site and within 150 meters from the Project site. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between February 15 to April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after 15 June. Protocol-level surveys and a report of findings, including negative findings, shall be provided to the City before the City issues any construction or grading permits for the Project and before the start of construction/ground disturbing activities."

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 8 of 18

If burrowing owls are identified using the project site during the surveys, the applicant shall contact the California Department of Fish and Wildlife (CDFW) and appropriate mitigation/management procedures shall be followed. The Project Applicant shall develop a Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project Applicant shall submit a final Burrowing Owl Mitigation Plan to CDFW and the City before the City issues any construction or grading permits for the Project. The Project 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 on site, 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 burrowing shall be collapsed.
- If burrowing owls are identified during the nesting season (September 1 to January 31) off site, ground-disturbing work can proceed as long as the work occurs no closer than 165 feet from the burrow. Depending on the level disturbance, a smaller buffer may be established in consultation with CDFW.
- In the event that a breeding pair or female owl with offspring are present at a burrow during the breeding season on or off site, a buffer zone of at least ~~50 feet~~ 500 meters from an occupied burrow shall be established unless otherwise authorized by CDFW. The buffer 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 #7:** If burrowing owls are identified, the Project Applicant should acquire 10 acres of land to protect habitat for burrowing owl in perpetuity. To be consistent with Conservation Actions for Burrowing Owl described in the Antelope Valley Regional Conservation Investment Strategy (ICF 2019), the Project Applicant should acquire mitigation lands that (1) support documented burrowing owl nests, (2) are contiguous with existing protected habitat, and (3) are within the Antelope Valley.

**Mitigation Measure #8:** The Project Applicant should protect 10 acres of 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 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, recorded, or otherwise executed before the City issues any construction or grading permits for the Project and before any ground-disturbing activities or vegetation removal.



Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 9 of 18

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

**Mitigation Measure #9:** No rodenticides and second-generation anticoagulant rodenticides should be used during Project construction and for the lifetime of the Project.

### **Additional Recommendations**

**Recommendation #5:** CDFW recommends the City revise the nesting bird mitigation measure in the MND in order to mitigate the Project's impact on nesting birds below a level of significance or, the Project may continue to have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status species by CDFW. CDFW recommends the City incorporating the following underlined language:

"A nesting bird survey shall be conducted by a qualified biologist within ~~seven (7)~~ 30- days prior to the start of construction/ground disturbing activities. The survey area shall include the Project site and all potential nesting habitat within a minimum 500-foot radius from the Project site. If Project construction and activities are delayed or suspended for more than seven (7) days during the nesting bird season, a qualified biologist shall repeat nesting bird surveys before any activities can recommence.

If active bird nests are identified during the survey, the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. Impacts to nesting birds will be avoided by delay of work (no work during the bird nesting season from February 15 through September 15) or establishing a buffer of 500 feet around active raptor nests or 300 50 feet around migratory bird species nests. No-disturbance buffers should be maintained until the breeding season has ended or until a qualified biologist determines that the birds have fledged and are no longer reliant upon the nest or parental care for survival."

**Recommendation #6:** The MND does not provide information on natural communities within and adjacent to the Project site that could be impacted by the Project. The presence of western Joshua trees within and adjacent to the Project site may indicate that the Project site supports Joshua tree woodland (*Yucca brevifolia* Woodland Alliance). The Project's impact on natural communities, specifically Sensitive Natural Communities, should be disclosed in the MND.

Natural communities, alliances, and associations with a State-wide ranking of S1, S2, and S3 should be considered Sensitive Natural Communities and declining at the local, regional, or State level. These ranks can be obtained by visiting [Vegetation Classification and Mapping Program - Natural Communities](#) webpage (CDFW 2022c). CDFW considers Sensitive Natural Communities to meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). The presence of and the Project's impact on Sensitive Natural Communities should be addressed during CEQA.

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 10 of 18

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

**Recommendation #7:** CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., CNDDDB] which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Information on special status species should be submitted to the CNDDDB by completing and submitting [CNDDDB Field Survey Forms](#) (CDFW 2022d). Information on special status native plant populations and sensitive natural communities, the [Combined Rapid Assessment and Relevé Form](#) should be completed and submitted to CDFW's Vegetation Classification and Mapping Program (CDFW 2021e).

**Recommendation #8:** CDFW recommends the City update the Project's proposed Biological Resources Mitigation Measures and condition the environmental document to include mitigation measures recommended in this letter. CDFW provides comments to assist the City in developing mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear in order for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment A).

### **Filing Fees**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the City of Lancaster and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required for the underlying Project approval to be operative, vested, and final (Cal. Code Regs., tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

### **Conclusion**

We appreciate the opportunity to comment on the Project to assist the City of Lancaster in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City of Lancaster has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines, § 15073(e)]. If you have any questions or comments regarding this letter, please contact Ruby Kwan-Davis, Senior Environmental Scientist (Specialist), at [Ruby.Kwan-Davis@wildlife.ca.gov](mailto:Ruby.Kwan-Davis@wildlife.ca.gov) or (562) 619-2230.

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 11 of 18

Sincerely,

DocuSigned by:  
  
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Erinn Wilson-Olgin  
Environmental Program Manager I  
South Coast Region

cc: CDFW

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OPR

State Clearinghouse, Sacramento – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

#### References:

- [CDFWa] California Department of Fish and Wildlife. 2022. Trimming of western Joshua trees and removal of dead western Joshua trees. What is “Take”? Available from: <https://wildlife.ca.gov/Conservation/CESAWJT>
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- [CDFWd] California Department of Fish and Wildlife. 2022. Submitting Data to the CNDDDB. Available from: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



### Attachment A: Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		Timing	Responsible Party
<b>REC-1- Project's CEQA Document</b>	The Project's CEQA document should address all the Project's impact on CESA endangered, threatened, and/or candidate species. The Project's CEQA document should also specify a mitigation monitoring and reporting program that will meet the requirements of an Incidental Take Permit. It is important that the take proposed to be authorized by CDFW's Incidental Take Permit be described in detail in the Project's CEQA document. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an Incidental Take Permit.	Prior to finalizing CEQA document	City of Lancaster (City)
<b>REC-2- Mitigation for Western Joshua Tree Impacts</b>	The Project Applicant should submit an Incidental Take Permit Application to CDFW that provides the following information (at a minimum): <ol style="list-style-type: none"> <li>1) An analysis of individual western Joshua trees (clonal and non-clonal) and western Joshua tree seedbank that would be impacted both within the Project site and within 300 feet of the Project site;</li> <li>2) An analysis of the acres of natural communities supporting western Joshua trees that would be impacted both within the Project site and within 300 feet of the Project site provided according to alliance and/or association-based natural community names. The <a href="#">Manual of California Vegetation</a> (MCV) should be used to inform this mapping and assessment as well as CDFW's <a href="#">Protocols for Surveying and Evaluating Impacts to Special Status Native</a></li> </ol>	Prior to the City issuing any construction or grading permits for the Project	Project Applicant

Mitzi Alvarado  
 City of Lancaster  
 September 8, 2022  
 Page 13 of 18

	<p><a href="#">Plant Populations and Sensitive Natural Communities:</a></p> <p>3) A map of the Project's site plan overlaid on location of western Joshua trees and natural communities; and,</p> <p>4) A hydrologic analysis of how water would be transported across the Project site and adjacent areas after Project build-out.</p>		
<b>REC-3- Disclosing Impacts on Tricolored Blackbird</b>	The City should revise the Project's CEQA document to provide a discussion of the Project's potential impact on tricolored blackbird. Conclusions made as to habitat quality and suitability should be substantiated by scientific and factual data, which may include maps, diagrams, and similar relevant information sufficient to permit full assessment of significant impacts by reviewing agencies. Potential direct and indirect impacts on tricolored blackbird should be discussed. If the Project would impact tricolored blackbird, the Project's CEQA should provide measures to avoid and/or mitigate potential impacts to tricolored blackbird as well as habitat supporting the species.	Prior to finalizing CEQA document	City
<b>REC-4- Recirculating the Project's CEQA Document</b>	If the Project would impact tricolored blackbird, the impact would be significant under CEQA. Accordingly, the City should recirculate the Project's CEQA document for public review and commenting prior to finalizing the Project's CEQA document.	Prior to finalizing CEQA document	City
<b>REC-5- Disclosing Information and Impacts on Natural Communities</b>	The City should revise the Project's CEQA document to provide a discussion of the Project's potential impact on natural communities and Sensitive Natural Communities. The City should provide a map of natural communities and Sensitive Natural Communities within and adjacent to the Project site. A map should show natural community alliances and/or associates according to the <a href="#">Manual of California Vegetation</a> (MCV). The map should also be prepared in accordance with CDFW's <a href="#">Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</a> . The CEQA document should provide the State-wide ranking of each natural community identified.	Prior to finalizing CEQA document	City

Mitzi Alvarado  
 City of Lancaster  
 September 8, 2022  
 Page 14 of 18

<p><b>REC-6- Submitting Data for Sensitive and Special Status Species and Natural Communities</b></p>	<p>CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., CNDDDB] which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Information on special status species should be submitted to the CNDDDB by completing and submitting <a href="#">CNDDDB Field Survey Forms</a>. Information on special status native plant populations and sensitive natural communities, the <a href="#">Combined Rapid Assessment and Relevé Form</a> should be completed and submitted to CDFW's Vegetation Classification and Mapping Program.</p>	<p>Prior to finalizing CEQA document</p>	<p>City</p>
<p><b>REC-7- Mitigation and Monitoring Reporting Plan</b></p>	<p>The City should update the Project's proposed Biological Resources Mitigation Measures and condition the environmental document to include mitigation measures recommended in CDFW's comment letter.</p>	<p>Prior to finalizing CEQA document</p>	<p>City</p>
<p><b>MM-1-Impacts on Western Joshua Tree- Compensatory Mitigation</b></p>	<p>The Project Applicant shall provide compensatory mitigation for the Project's impact on western Joshua trees at no less than 2:1, or as required in an Incidental Take Permit for western Joshua trees issued by CDFW.</p>	<p>Prior to the City issuing any construction or grading permits for the Project</p>	<p>Project Applicant</p>
<p><b>MM-2-Impacts on Western Joshua Tree- Avoidance</b></p>	<p>The Project Applicant shall fully avoid impacts on western Joshua trees off site. The Project Applicant shall implement a minimum 300-foot buffer. Temporary protective fencing and signage shall be installed to demarcate the 300-foot buffer. No work or access shall occur within the buffer. The temporary fencing shall be removed only after all Project construction is complete.</p> <p>If the Project Applicant is unable to avoid impacts on western Joshua trees off site, the Project Applicant shall also obtain take authorization for those off-site western Joshua trees.</p>	<p>During Project construction (avoidance) or prior to the City issuing any construction or grading permits for the Project (if avoidance not possible)</p>	<p>Project Applicant</p>

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 15 of 18

<b>MM-3-Impacts on Tricolored Blackbird-Surveys</b>	The Project Applicant shall retain a qualified biologist to survey the stormwater detention basin and where suitable habitat occurs, as access allows, for tricolored blackbird and habitat. The Project Applicant shall submit a report, including negative findings, to the City prior to issuance of any construction or grading permits.	Prior to the City issuing any construction or grading permits for the Project	Project Applicant
<b>MM-4-Impacts on Tricolored Blackbird-Avoidance</b>	If tricolored blackbird is present, the Project shall fully avoid impacts by avoiding any Project-related construction and activities during the bird nesting season from February 15 through September 15.	During Project construction	Project Applicant
<b>MM-5-Impacts on Tricolored Blackbird-Take Authorization for Unavoidable Impacts</b>	If tricolored blackbird is present and the Project cannot fully avoid impacts, the Project Applicant shall consult with CDFW on appropriate take authorization. If an Incidental Take Permit is required from CDFW, a copy of the Incidental Take Permit shall be provided to the City prior to the issuance of any construction or grading permits.	Prior to the City issuing any construction or grading permits for the Project	Project Applicant
<b>MM-6-Impacts on Burrowing Owl-Surveys and Avoidance Buffers</b>	The applicant shall retain a qualified biologist who shall conduct burrowing owl protocol surveys on the project site in accordance with the procedures established by the California Department of Fish and Wildlife in the Staff Report on Burrowing Owl Mitigation. Protocol surveys shall be conducted on the Project site and within 150 meters from the Project site. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between February 15 to April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after 15 June. Protocol-level surveys and a report of findings, including negative findings, shall be provided to the City before the City issues any construction or grading permits for the Project and before the start of construction/ground disturbing activities.	Prior to the City issuing any construction or grading permits for the Project (surveys and mitigation plan)  During Project construction	Project Applicant



Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 16 of 18

	<p>If burrowing owls are identified using the project site during the surveys, the applicant shall contact the California Department of Fish and Wildlife (CDFW) and appropriate mitigation/management procedures shall be followed. The Project Applicant shall develop a Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project Applicant shall submit a final Burrowing Owl Mitigation Plan to CDFW and the City before the City issues any construction or grading permits for the Project. The Project 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"><li>• If burrowing owls are identified during the non-nesting season on site, 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 burrowing shall be collapsed.</li><li>• If burrowing owls are identified during the nesting season (September 1 to January 31) off site, ground-disturbing work can proceed as long as the work occurs no closer than 165 feet from the burrow. Depending on the level disturbance, a smaller buffer may be established in consultation with CDFW.</li><li>• In the event that a breeding pair or female owl with offspring are present at a burrow during the breeding season on or off site, a buffer zone of at least 500 meters from an occupied burrow shall be established unless otherwise authorized by CDFW. The buffer shall be established around the burrow until the offspring have fledged and left the burrow. No work shall occur within the buffer zone.</li></ul>		
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Mitzi Alvarado  
 City of Lancaster  
 September 8, 2022  
 Page 17 of 18

<b>MM-7-Impacts on Burrowing Owl- Preservation of Habitat</b>	<p>If burrowing owls are identified, the Project Applicant shall acquire 10 acres of land to protect habitat for burrowing owl in perpetuity. The Project Applicant shall acquire mitigation lands that (1) support documented burrowing owl nests, (2) are contiguous with existing protected habitat, and (3) are within the Antelope Valley.</p>	<p>Prior to the City issuing any construction or grading permits for the Project</p>	<p>Project Applicant</p>
<b>MM-8-Impacts on Burrowing Owl- Preservation of Habitat in Perpetuity</b>	<p>The Project Applicant shall protect 10 acres of 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. An appropriate 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, recorded, or otherwise executed before the City issues any construction or grading permits for the Project and before any ground-disturbing activities or vegetation removal.</p>	<p>Prior to the City issuing any construction or grading permits for the Project</p>	<p>Project Applicant</p>
<b>MM-9-Impacts on Burrowing Owl-Prohibit Use of Rodenticides</b>	<p>No rodenticides and second-generation anticoagulant rodenticides shall be used during Project construction and for the lifetime of the Project.</p>	<p>Before, during, and after Project</p>	<p>Project Applicant</p>
<b>MM-10-Impacts on Nesting Birds – Avoidance Buffers</b>	<p>A nesting bird survey shall be conducted by a qualified biologist within seven (7) days prior to the start of construction/ground disturbing activities. The survey area shall include the Project site and all potential nesting habitat within a minimum 500-foot radius from the Project site. If Project construction and activities are delayed or suspended for more than seven (7) days during the</p>	<p>Within seven days prior to the start of construction/ground disturbing</p>	<p>Project Applicant</p>

Mitzi Alvarado  
City of Lancaster  
September 8, 2022  
Page 18 of 18

	<p>nesting bird season, a qualified biologist shall repeat nesting bird surveys before any activities can recommence.</p> <p>If active bird nests are identified during the survey, the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. Impacts to nesting birds will be avoided by delay of work (no work during the bird nesting season from February 15 through September 15) or establishing a buffer of 500 feet around active raptor nests or 300 feet around migratory bird species nests. No-disturbance buffers shall be maintained until the breeding season has ended or until a qualified biologist determines that the birds have fledged and are no longer reliant upon the nest or parental care for survival.</p>	<p>activities (surveys)</p> <p>During Project construction</p>	
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