

State of California – Natural Resources Agency

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DEPARTMENT OF FISH AND WILDLIFE

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Subject: Mitigated Negative Declaration for Lancaster Waste to Renewable Hydrogen Project (Conditional Use Permit No. 21-06), SCH #2022080669, City of Lancaster, Los Angeles County

Dear Ms. Swain:

The California Department of Fish and Wildlife (CDFW) has reviewed the Lancaster Waste to Renewable Hydrogen Project (Conditional Use Permit No. 21-06) (Project) Mitigated Negative Declaration (MND) from the City of Lancaster (City). The Project is proposed from SG H2 Lancaster Holding Company, LLC (Project Applicant). Supporting documentation for the Project includes the *Biological Resources Technical Report* (BRTR) dated August 2022. 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 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.

Project Description and Summary

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Objective: The proposed Project consists of the construction and operation of a facility that would produce hydrogen from unrecyclable mixed wastepaper feedstock. Project construction would be completed within approximately 16 months and would include: site preparation of grading and paving; installation of foundations and structural components for equipment; construction of administrative/control and warehouse building; and underground trenching for utilities, including electrical, process and potable water piping, and sewer piping.

Location: The Project is located north of Avenue M between 5th and 6th Streets East in Lancaster, California. The proposed project site is located on three parcels (Assessor's Parcel Numbers 3126-017-028, 3126-017-040, and 3126-017-039). The parcels include vacant, undeveloped land designated as Heavy Industrial. Adjacent and surrounding areas are also zoned as Heavy Industrial and include vacant land, industrial uses, and three single-family residences.

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. The MND should provide adequate and complete disclosure of the Project's potential impacts on biological resources [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151].

Specific Comments

Comment #1: Impacts on Western Joshua Trees (*Yucca brevifolia*)

Issue: The Project will impact western Joshua trees.

Specific impacts: The Project would remove approximately 2 western Joshua trees and impact an undisclosed acreage of western Joshua tree seedbank. The Project would alter on-site hydrology, which could also impact western Joshua tree and seedbank. In addition, Project activities could have indirect impacts on western Joshua tree and seedbank in areas adjacent to the Project site.

Why impact would occur: Take of western Joshua tree is defined as any activity that results in the removal of a western Joshua tree, or any part thereof, or impacts the seedbank surrounding one or more western Joshua trees (CDFW 2022a). Within the Project site, the Project would require vegetation removal, grading, and compacting soils. As a result, the Project would remove western Joshua trees, eliminate and modify habitat, and crush and/or bury living seeds in the soil, rendering living seeds inviable and/or causing them to be killed.

While CDFW agrees with Mitigation Measure #6, that an Incidental Take Permit (ITP) shall be obtained from the CDFW for the loss of Western Joshua tree, CEQA requires an adequate and complete effort of full disclosure of a project's significant environmental impacts [CEQA Guidelines, § 15003(i)]. While the MND discloses that the Project would have a significant impact on the 2 western Joshua trees on site, it is unclear how and where impacts on the seedbank would occur. In addition, the MND does not disclose the extent of the Project's direct, indirect, and cumulative effect, either directly or through habitat modifications, on western Joshua tree or its seedbank. Nor does it discuss the Project's potential effects on in situ western Joshua trees/seedbank surrounding the site. As a result of insufficient disclosure in the MND, it

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is unclear what measures the City has taken to avoid or minimize any impacts prior to take of western Joshua trees. In addition, there is no mitigation disclosed other than obtaining an ITP for the Project. Overall, it is unclear how impacts to western Joshua trees have been sufficiently reduced to prevent a net loss of western Joshua tree.

Evidence impact would be significant: The western Joshua tree is a species designated as candidate for listing as threatened pursuant to CESA (Fish & G. Code, § 2050 *et seq.*). The western Joshua tree is granted full protection of a threatened species under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). Although the MND requires the Project Applicant to seek an ITP, the MND does not describe or disclose the compensatory mitigation required for the Project's impact on western Joshua trees, their seedbank, or in situ western Joshua trees adjacent to the site. Accordingly, the Project continues to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW concurs with Mitigation Measure #6 in the MND, which would require the City to obtain an ITP from CDFW for incidental take of western Joshua trees. The City should submit an ITP Application to CDFW that provides the following information (at a minimum):

1. An analysis of individual western Joshua trees (clonal and non-clonal) and western Joshua tree seedbank (including that resulting from the dead trees on site) 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 communities found in the [Manual of California Vegetation](#) (MCV);
3. A map of the Project's site plan overlaid on location of western Joshua trees and natural communities; and
4. A discussion of whether development could impact any in-situ western Joshua trees adjacent to the Project site.

Mitigation Measure #2: The City should provide compensatory mitigation for the Project's impact on western Joshua trees at no less than 2:1, or as required in an ITP for western Joshua trees issued by CDFW. Mitigation should be higher if the Project will impact a western Joshua tree population that is increasing through seedling recruitment. Mitigation lands provided by the City should (at a minimum):

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

Mitigation Measure #3: The City should require the Project Applicant to protect mitigation lands in perpetuity under a conservation easement dedicated to a local land conservancy or other

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appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012). Assembly Bill 1094 amended Government Code sections 65965-65968. Under Government Code section 65967(c), the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves. An appropriate non-wasting endowment should be provided for the long-term management of mitigation lands. A mitigation plan should include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. Issues that should be addressed include but are not limited to the following: protection from any future development and zone changes; restrictions on access; proposed land dedications; control of illegal dumping; water pollution; and, increased human intrusion. A conservation easement and endowment funds should be fully acquired, established, transferred, or otherwise executed prior to impacts on western Joshua trees.

Recommendation #1: The City should revise the MND to disclose the Project's impact on western Joshua tree by providing the following information:

1. The Project's potential impact on western Joshua tree seedbank within the Project site;
2. The Project's potential impact on western Joshua trees and seedbank adjacent to the Project site;
3. The Project's potential impact on each unique native and non-native natural community supporting western Joshua trees within and adjacent to the Project site;
4. The Project's construction, operation, and maintenance activities that could impact western Joshua trees and seedbank within and adjacent to the Project site; and
5. The Project's cumulative impact on western Joshua tree.

Recommendation #2: Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP 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 ITP. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an ITP. 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 ITP.

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

Issue: Swainson's hawks are regularly observed foraging throughout the Palmdale and Lancaster area. The Project may impact foraging habitat of this species.

Specific impacts: The Project will likely result in the loss of foraging habitat for a CESA-listed raptor species. The BRTR identifies high suitability for foraging habitat on site.

Why impact would occur: 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

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shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016).

The BRTR states, “Swainson’s hawks have a high potential to be present on or over the project site during migration but a low potential to forage on the project site during the nesting season.” Despite this potential, 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 at an appropriate time of year, there is potential that species presence may have been observed. Project activities without pre-construction surveys could result in injury or mortality of unidentified Swainson’s hawk. Lastly, Project construction activities, including vegetation removal and ground clearing activities, will result in loss of foraging 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. 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 substantially 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 #4: 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* (2010). CDFW recommends conducting focused surveys for Swainson’s hawk following the 2010 guidance and disclosing the results in the Project’s environmental documentation. 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 state-listed species. Additional documentation may be required as part of an ITP application for the Project for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of state-listed species.

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 [also see Comment #1 (Joshua tree), Mitigation Measure #3].

Comment #3: Impacts on Special-Status Wildlife Species

Issue: The Project may impact several special status wildlife species, including those designated as California Species of Special Concern (SSC).

Specific impacts: Project construction and activities, directly or through habitat modification, may result in direct injury or mortality (e.g., trampling, crushing), reduced reproductive capacity,

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population declines, or local extirpation of special status wildlife species, including Northern legless lizard (*Anniella pulchra*), California glossy snake (*Arizona elegans occidentalis*), burrowing owl (*Athene cunicularia*), mountain plover (*Charadrius montanus*), Northern harrier (*Circus hudsonius*), loggerhead shrike (*Lanis ludovicianus*), Le Conte's thrasher (*Toxostoma lecontei*), and Townsend's big eared bat (*Corynorhinus townsendii*). Also, loss of foraging, breeding, or nursery habitat for SSC may occur.

Why impacts would occur: The BRTR identifies several special status wildlife species that were either observed or have a moderate potential to be on site. As such, there is potential for the Project to impact these species. Without appropriate avoidance or minimization measures, impacts to special status species could result from ground-disturbing activities and vegetation removal. Wildlife may be trapped or crushed under structures. Large equipment, equipment and material staging, and vehicle and foot traffic could trample or bury wildlife. Special status species could be injured or killed. For example, more specifically, impacts on reptile SSC are more likely to occur because these are cryptic species that are less mobile and seek refuge under structures.

Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. The MND only provides one pre-construction biological survey prior to the start of Project activities. One general survey is insufficient to detect a variety of special status species. 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.

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

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

Recommended Potentially Feasible Mitigation Measure(s):

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Mitigation Measure #6: Biological Monitor - To avoid direct injury and mortality of any special status species, CDFW recommends the City require the Project Applicant to have a qualified biologist on site to move out of harm's way wildlife of low mobility that would be injured or killed. Wildlife should be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site. In areas where any special status species was found, work may only occur in these areas after a qualified biologist has determined it is safe to do so. Even so, the qualified biologist should advise workers to proceed with caution near flagged areas. A qualified biologist should be on site daily during initial ground and habitat disturbing activities and vegetation removal. Then, the qualified biologist should be on site weekly or bi-weekly (once every two weeks) for the remainder of Project until the cessation of all ground disturbing activities to ensure that no wildlife of any kind is harmed.

Mitigation Measure #7: Scientific Collecting Permit – CDFW recommends the City require the Project Applicant retain a qualified biologist with appropriate handling permits, or should obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's [Scientific Collection Permits](#) webpage for information (CDFW 2022c). Pursuant to the [California Code of Regulations, title 14, section 650](#), the Project Applicant/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities.

Mitigation Measure #8: Wildlife Relocation Plan - Prior to initial ground and habitat disturbing activities and vegetation removal, CDFW recommends the Project Applicant retain a qualified biologist to prepare a Wildlife Relocation Plan. The Wildlife Relocation Plan should describe all wildlife species that could occur within the Project site and proper handling and relocation protocols. The Wildlife Relocation Plan should include species-specific relocation areas, at least 200 feet outside of the Project site and in suitable and safe relocation areas. The Project Applicant should submit a copy of a Wildlife Relocation Plan to the City prior to initial ground and habitat disturbing activities and vegetation removal. No wildlife nests, eggs, or nestlings may be removed or relocated at any time.

Mitigation Measure #9: Injured or Dead Wildlife – If any special status species are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW and the City within three calendar days of the incident or finding. The report should include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

Comment #4: Impacts to Bat Species

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Issue: The Project includes activities such as grading and vegetation removal that may result in the removal of foraging habitat for Townsend's big eared bat (*Corynorhinus townsendii*), a designated SSC.

Specific impacts: Project activities include vegetation removal that may disturb or remove areas that provide foraging habitat and therefore has the potential for the indirect loss of bats. Indirect impacts could also result from increased noise disturbances, human activity, dust, vegetation clearing, ground-disturbing activities (e.g., staging, mobilizing, and grading), and vibrations caused by heavy equipment.

Why impacts would occur: The removal of vegetation may potentially result in the loss or disturbance of foraging and roosting habitat for bats. Construction activities will also temporarily increase the disturbance levels as well as human activity in the Project area. Moreover, the Project may permanently remove potential foraging habitat for bats. Lastly, the general biological reconnaissance survey for the Project was conducted during daytime hours. Since bat species are most active at night between dusk and dawn, surveys conducted during the daytime would miss detection. Therefore, there is potential bats present on site that would be undetected. This may cause the Project to impact individuals not previously known to reside in or around the Project area. Bats would require more species-specific and specific time-of-day surveys.

Evidence impacts would be significant: Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment, (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). There are many bat species that can be found year-round in urban areas throughout the south coast region of California (Miner & Stokes, 2005). Several bat species are considered SSC and meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15065). Take of California Species of Special Concern could require a mandatory finding of significance by the City (CEQA Guidelines, § 15065).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #10: Prior to construction activities, CDFW recommends a qualified bat specialist conduct bat surveys within Project area (plus a 100-foot buffer as access allows) in order to identify potential habitat that could provide daytime and/or nighttime roost sites and any foraging activity. CDFW recommends the use of acoustic recognition technology to maximize detection of bat species to minimize impacts to sensitive bat species. A discussion of survey results, including negative findings should be provided to the City. Depending on the survey results, a qualified bat specialist should discuss potentially significant effects of the Project on bats and include species specific mitigation measures to reduce impacts to below a level of significance (CEQA Guidelines, § 15125). Surveys, reporting, and preparation of mitigation measures by a qualified bat specialist should be completed and submitted to the City prior to any Project-related ground-disturbing activities or vegetation removal.

Comment #5: Impacts to Rare Plants

Issue: According to the MND, there is moderate to high potential for white pygmy-poppy (*Canbya candida*) and crowned muilla (*Muilla coronata*) on site. There is no proposed mitigation to these rare plants that may be on site.

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Specific Impacts: Project activities may lead to the potential loss of white pygmy-poppy and crowned muilla population. This may result in a population decline of the species, or local extirpation of a sensitive or special status plant without appropriate mitigation

Why impacts would occur: CDFW is concerned that no further surveys for these rare plants are recommended despite suitable habitat being present. The MND concludes that, "These species have no formal protection and require no additional avoidance or mitigation." However, the extent of impacts to these plant species may be more substantial than what was concluded. The Project site may support unidentified individuals, especially given the presence of suitable habitat in the Project site. The two non-floristic-specific surveys (i.e., general biological surveys) that have been conducted may not accurately capture rare population distribution and abundance because plants typically emerge at different times throughout its bloom period. In addition, both of these plants are quite small and may be difficult to detect during a general survey. Therefore, the BRTR may have underreported the abundance, distribution, and density of these plant species. The proposed Project may result in extirpation of these plant species from the Project site.

Evidence impacts would be significant: White pygmy-poppy and crowned muilla both have a California Rare Plant Rank (CRPR) of 4.2. Plants with a CRPR of 4.2 have a limited distribution and are fairly threatened in the State. Impacts to these species or their habitat must be analyzed during preparation of environmental documents relating to CEQA, as they meet the definition of rare or endangered (CEQA Guidelines, § 15380). California Native Plant Society's (CNPS) [Rare Plant Ranks](#) page includes additional rank definitions (CNPS 2020). Impacts to special status plants should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Inadequate avoidance, minimization, and mitigation measures for impacts to special status plant 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 #11: CDFW strongly recommends two additional season-appropriate, focused rare plant surveys to occur between March and June to sufficiently document the abundance and distribution of these plant species and other rare plants that may be present. CDFW recommends the survey be performed by a qualified botanist with appropriate experience and knowledge of southern California flora and performed according to CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities](#) (CDFW 2018). Surveys should be completed prior to Project-related ground-disturbing activities and the City's issuance of any grading permits.

Mitigation Measure #12: CDFW recommends the qualified botanist prepare a report summarizing survey methods and results. A final report should be submitted to CDFW for review prior to Project related ground-disturbing activities and the City's issuance of any grading permits. The survey report should provide the following information:

1. A description and map of the survey area. CDFW recommends the map show surveyor(s) track lines to document that the entire site was covered during field surveys;
2. Field survey conditions that should include name(s) of qualified botanists(s) and brief qualifications, date and time of survey, survey duration, general weather conditions, survey goals, and species searched;

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3. Map and quantify the total area of suitable rare plant habitat by species;
4. Map(s) showing the location of individual plants or populations by species, and number of plants or density of plants per square feet occurring at each location. Use appropriate symbology, text boxes, and other map elements to show and distinguish between species found and which plants/populations will be avoided versus impacted by Project construction and activities that would require mitigation; and
5. A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each rare plant or population is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species).

Mitigation Measure #13: CDFW recommends the City compensate for the loss of individual plants and associated habitat acres. The Project Applicant should offset any loss of these plant species such that there is no net loss or at a ratio acceptable to CDFW. Mitigation proposed to offset loss of suitable habitat should be disclosed in the final CEQA document. The mitigation proposed should also be justified as to how it would reduce the Project's impact on these plant species to less than significant. If the mitigation proposed is through off-site acquisition, the off-site habitat should be similar in kind, as near to the Project site as possible, and protected in perpetuity under a conservation easement. CDFW recommends that mitigation occur at a CDFW-approved mitigation bank or via an entity that has been approved to hold and manage mitigation lands. Mitigation bank credits should be purchased, approved, or otherwise fully executed prior to Project-related ground-disturbing activities and the City's issuance of any grading permits.

Mitigation Measure #14: If credits at a CDFW-approved mitigation bank are not available for mitigating impacts to these plant species and habitat, CDFW recommends setting aside replacement habitat to be protected 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. Mitigation lands should be in the same watershed as the Project. An appropriate non-wasting endowment should be provided for the long-term management of mitigation lands. A conservation easement and endowment funds should be fully acquired, established, transferred, or otherwise executed prior to Project-related ground disturbing activities and the City's issuance of grading permits.

Additional Recommendations

Recommendation #3: Burrowing Owl - CDFW recommends modifying Mitigation Measure #4 on page 34 of the MND to include underlined language and remove language with strikethrough.

"To protect burrowing owl that have a potential to be present within or adjacent or the project site, a pre-construction burrowing owl survey shall be completed throughout the project site and in all accessible suitable habitat within 500 feet of the project site. Burrowing owl protocol surveys shall be conducted on the project site in accordance with the procedures established in CDFW's March 7, 2012, Staff Report on Burrowing Owl Mitigation prior to the City issuing construction permits (CDFW 2012). In California, the burrowing owl breeding season extends from 1 February to 31 August with some variances by geographic location and climatic conditions. Survey protocol for breeding

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season owl surveys states to conduct 4 survey visits: 1) at least one site visit between February 15 to April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after 15 June. If burrowing owl are nesting on the project site during the nesting season, work will be delayed until the nest has successfully fledged. If burrowing owl are present outside of the nesting season, a qualified biologist shall develop and implement a passive relocation plan. This plan shall be developed and implemented according to the 2012 CDFW Staff Report on Burrowing Owl Mitigation. At a minimum, the following shall occur:

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

Recommendation #4: Nesting Birds - CDFW recommends modifying Mitigation Measure #3 on page 34 of the MND to include underlined language and remove language with strikethrough.

“To protect nesting birds that are likely to occur within or adjacent to the project site, project activities should be initiated outside of the nesting season between September 1 and January 31 (as early as January 1 for some raptors). If project activities must be initiated during the nesting season, a nesting bird survey shall be conducted by a qualified biologist no more than seven days prior to the start of project activities. If nesting birds are encountered, an appropriate buffer will be established by a qualified biologist around the nest to avoid potential take of the nest. 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 passerine (perching birds and songbirds) nests, 500 feet around non-listed raptor nests and 0.5 mile around listed bird nests. A biological monitor will track the progress of the nest and will remove the buffer once nesting is complete and fledglings have left the nest. No work will be permitted within the buffer.”

Recommendation #5: Rodenticides and second-generation anticoagulant rodenticides should be prohibited both during and over the life of the Project.

Recommendation #6: 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 2022e).

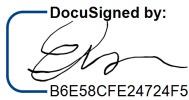
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Recommendation #7: CDFW recommends the City update the Project's proposed Biological Resources Mitigation Measures and condition the environmental document to include mitigation measures recommended in this letter. CDFW provides comments to assist the City in developing mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment A).

Conclusion

CDFW appreciates the opportunity to provide early comments and recommendations regarding the Project to assist the City of Lancaster in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW looks forward to reviewing an ensuing Project-related environmental document. If you have any questions or comments regarding this letter, please contact Felicia Silva, Environmental Scientist, at Felicia.Silva@wildlife.ca.gov or (562) 292-8105.

Sincerely,

DocuSigned by:


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Erinn Wilson-Olgin
Environmental Program Manager I

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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- Impacts to Joshua tree- CESA ITP	The City will need to obtain an ITP from CDFW for incidental take of western Joshua trees. The City shall submit an ITP Application to CDFW that provides the following information (at a minimum): 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 communities found in the Manual of California Vegetation (MCV); 3) A map of the Project's site plan overlaid on location of western Joshua trees and natural communities; 4) A discussion of whether development could impact any in-situ western Joshua trees adjacent to the Project site.	Prior to issuance of development permit	City of Lancaster (City)/Project Applicant

<p>MM-BIO-2- Impacts to Joshua tree- survey and impact assessment</p>	<p>The City shall provide compensatory mitigation for the Project's impact on western Joshua trees at no less than 2:1, or as required in an ITP for western Joshua trees issued by CDFW. Mitigation shall be higher if the Project will impact a western Joshua tree population that is increasing through seedling recruitment. Mitigation lands provided by the City shall (at a minimum):</p> <ol style="list-style-type: none"> 1) Support western Joshua trees of similar density, abundance, and age structure; 2) Support natural communities of similar native plant species composition, density, structure, and function to habitat that was impacted; 3) Support nursery plants for western Joshua tree recruits; and, 4) Not be exposed or have the potential to be exposed to disturbances such as OHV activity, illegal access, and encroachment from pending or future development. 	<p>Prior to issuance of development permit</p>	<p>City/Project Applicant</p>
<p>MM-BIO-3- Impacts to Joshua tree- avoidance plan</p>	<p>The City shall require the Project Applicant to protect mitigation lands in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012). Assembly Bill 1094 amended Government Code sections 65965-65968. Under Government Code section 65967(c), the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves. An appropriate non-wasting endowment 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</p>	<p>Prior to issuance of development permit</p>	<p>City/Project Applicant</p>

	fully acquired, established, transferred, or otherwise executed prior to impacts on western Joshua trees.		
MM-BIO-4- Swainson's Hawk	CDFW released guidance for this species entitled <i>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</i> (2010). CDFW recommends conducting focused surveys for Swainson's hawk following the 2010 guidance and disclosing the results in the Project's environmental documentation. 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 state-listed species. Additional documentation may be required as part of an ITP application for the Project for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of state-listed species.		
MM-BIO-5- Swainson's Hawk	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 [also see Comment #1 (Joshua tree), Mitigation Measure #3].		
MM-BIO-6- Biological Monitor	To avoid direct injury and mortality of SSC, CDFW recommends the City require the Project Applicant to have a qualified biologist on site to move out of harm's way wildlife of low mobility that would be injured or killed. Wildlife shall be protected, allowed to move away on its own (non-invasive, passive relocation), or relocated to suitable habitat adjacent to the Project site. In areas where SSC was found, work may only occur in these areas after a qualified biologist has determined it is safe to do so. Even so, the qualified biologist shall advise workers to proceed with caution near flagged areas. A qualified biologist shall be on site daily during initial ground and habitat disturbing activities and vegetation removal. Then, the qualified biologist shall be on site weekly or bi-weekly	Prior to Project ground disturbing activities	City/Project Applicant

	(once every two weeks) for the remainder of Project until the cessation of all ground disturbing activities to ensure that no wildlife is harmed.		
MM-BIO-7- Scientific Collecting Permit	<p>CDFW recommends the City require the Project Applicant retain a qualified biologist with appropriate handling permits, or shall obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's Scientific Collection Permits webpage for information (CDFW 2022c). Pursuant to the California Code of Regulations, title 14, section 650, the Project Applicant/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities.</p>	Prior to Project ground disturbing activities	City/Project Applicant
MM-BIO-8- Wildlife Relocation Plan	<p>Prior to initial ground and habitat disturbing activities and vegetation removal, CDFW recommends the Project Applicant retain a qualified biologist to prepare a Wildlife Relocation Plan. The Wildlife Relocation Plan shall describe all wildlife species that could occur within the Project site and proper handling and relocation protocols. The Wildlife Relocation Plan shall include species-specific relocation areas, at least 200 feet outside of the Project site and in suitable and safe relocation areas. The Project Applicant shall submit a copy of a Wildlife Relocation Plan to the City prior to initial ground and habitat disturbing activities and vegetation removal. No bird nests, eggs, or nestlings may be removed or relocated at any time.</p>	Prior to Project ground disturbing activities	City/Project Applicant

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<p>MM-BIO-9- Injured or Dead Wildlife</p>	<p>If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area shall stop immediately, the qualified biologist shall be notified, and dead or injured wildlife documented immediately. A formal report shall be sent to CDFW and the City within three calendar days of the incident or finding. The report shall include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.</p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>
<p>MM-BIO-10-Bats</p>	<p>Prior to construction activities, CDFW recommends a qualified bat specialist conduct bat surveys within Project are (plus a 100-foot buffer as access allows) in order to identify potential habitat that could provide daytime and/or nighttime roost sites and any foraging activity. CDFW recommends the use of acoustic recognition technology to maximize detection of bat species to minimize impacts to sensitive bat species. A discussion of survey results, including negative findings shall be provided to the City. Depending on the survey results, a qualified bat specialist shall discuss potentially significant effects of the Project on bats and include species specific mitigation measures to reduce impacts to below a level of significance (CEQA Guidelines, § 15125). Surveys, reporting, and preparation of mitigation measures by a qualified bat specialist shall be completed and submitted to the City prior to any Project-related ground-disturbing activities or vegetation removal.</p>		
<p>MM-BIO-10- Impacts to sensitive plant communities- surveys</p>	<p>Two additional season-appropriate, focused rare plant surveys shall occur between March and June to sufficiently document the abundance and distribution of these plant species and other rare plants that may be present. The survey shall be performed by a qualified botanist with appropriate experience and knowledge of southern California flora and performed according to CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</p>	<p>Prior to issuance of development permit</p>	<p>City/Project Applicant</p>

	(CDFW 2018). Surveys shall be completed prior to Project-related ground-disturbing activities and the City’s issuance of any grading permits.		
MM-BIO-11- Impacts to sensitive plant communities-report preparation	<p>The qualified botanist shall prepare a report summarizing survey methods and results. A final report shall be submitted to CDFW for review prior to Project related ground-disturbing activities and the City’s issuance of any grading permits. The survey report shall provide the following information:</p> <ol style="list-style-type: none"> 1) A description and map of the survey area. The map will show surveyor(s) track lines to document that the entire site was covered during field surveys; 2) Field survey conditions that shall include name(s) of qualified botanists(s) and brief qualifications, date and time of survey, survey duration, general weather conditions, survey goals, and species searched; 3) Map and quantify the total area of suitable rare plant habitat by species; 4) Map(s) showing the location of individual plants or populations by species, and number of plants or density of plants per square feet occurring at each location. Use appropriate symbology, text boxes, and other map elements to show and distinguish between species found and which plants/populations will be avoided versus impacted by Project construction and activities that would require mitigation; and 5) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each rare plant or population is found. A sufficient description of biological conditions, primarily impacted habitat, shall include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species). 	Prior to issuance of development permit	City/Project Applicant
MM-BIO-12- Impacts to sensitive plant communities-	The City shall compensate for the loss of individual plants and associated habitat acres The Project Applicant shall offset any loss of these plant species such that there is no net loss or at a ratio acceptable to CDFW. Mitigation proposed to offset loss of suitable	Prior to Project ground disturbing activities	City/Project Applicant

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<p>compensatory mitigation</p>	<p>habitat shall be disclosed in the final CEQA document. The mitigation proposed shall also be justified as to how it would reduce the Project's impact on these plant species to less than significant. If the mitigation proposed is through off-site acquisition, the off-site habitat shall be similar in kind, as near to the Project site as possible, and protected in perpetuity under a conservation easement.. Mitigation shall occur at a CDFW-approved mitigation bank or via an entity that has been approved to hold and manage mitigation lands. Mitigation bank credits shall be purchased, approved, or otherwise fully executed prior to Project-related ground-disturbing activities and the City's issuance of any grading permits.</p>		
<p>MM-BIO-13- Impacts to sensitive plant communities- mitigation bank</p>	<p>If credits at a CDFW-approved mitigation bank are not available for mitigating impacts to these plant species and habitat, replacement habitat shall be set aside to be protected 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. Mitigation lands shall be in the same watershed as the Project site and support clay pans and/or alkali meadows containing these plant species. The abundance these plant species and total habitat acreage within the mitigation lands shall be no less than 10:1. An appropriate non-wasting endowment shall be provided for the long-term management of mitigation lands. A conservation easement and endowment funds shall be fully acquired, established, transferred, or otherwise executed prior to Project-related ground disturbing activities and the City's issuance of grading permits.</p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>
<p>REC-1-Impacts to Joshua tree</p>	<p>The City should revise the MND to disclose the Project's impact on western Joshua tree by providing the following information: 1) The Project's potential impact on western Joshua tree seedbank within the Project site; 2) The Project's potential impact on western Joshua trees and seedbank adjacent to the Project site; 3) The Project's potential impact on each unique native and non-</p>	<p>Prior to issuance of development permit</p>	<p>City/Project Applicant</p>

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	<p>native natural community supporting western Joshua trees within and adjacent to the Project site;</p> <p>4) The Project’s construction, operation, and maintenance activities that could impact western Joshua trees and seedbank within and adjacent to the Project site; and</p> <p>5) The Project’s cumulative impact on western Joshua tree.</p>		
REC-2-Impacts to Joshua tree	<p>Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP 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 ITP. It is important that the take proposed to be authorized by CDFW’s ITP be described in detail in the Project’s CEQA document D. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an ITP. 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 ITP.</p>	Prior to issuance of development permit	City/Project Applicant
REC-3-Burrowing Owl	<p>CDFW recommends modifying Mitigation Measure #4 on page 34 of the MND to include <u>underlined</u> language and remove language with strikethrough.</p> <p>“To protect burrowing owl that have a potential to be present within or adjacent or the project site, a pre-construction burrowing owl survey shall be completed throughout the project site and in all accessible suitable habitat within 500 feet of the project site. <u>Burrowing owl protocol surveys shall be conducted on the project site in accordance with the procedures established in CDFW’s March 7, 2012, Staff Report on Burrowing Owl Mitigation prior to the City issuing construction permits (CDFW 2012).</u></p>	Prior to Project ground disturbing activities	City/Project Applicant

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	<p><u>In California, the burrowing owl breeding season extends from 1 February to 31 August with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct 4 survey visits: 1) at least one site visit between February 15 to April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after 15 June.</u> If burrowing owl are nesting on the project site during the nesting season, work will be delayed until the nest has successfully fledged. If burrowing owl are present outside of the nesting season, a qualified biologist shall develop and implement a passive relocation plan. This plan shall be developed and implemented according to the 2012 CDFW Staff Report on Burrowing Owl Mitigation. <u>At a minimum, the following shall occur:</u></p> <ul style="list-style-type: none"> • <u>If burrowing owls are identified during the non-nesting season, a qualified biologist shall install one-way gates to relocate the owl to a suitable nearby property. Upon confirmation that the burrow is empty, the burrowing shall be collapsed.</u> • <u>In the event that a breeding pair or female owl with offspring are present at a burrow, a buffer zone of at least 50 feet shall be established around the burrow until the offspring have fledged and left the burrow. No work shall occur within the buffer zone. The specific buffer zone shall be established in coordination with CDFW.”</u> 		
<p>REC-8-Nesting Birds</p>	<p>CDFW recommends modifying Mitigation Measure #3 on page 21 of the MND to include <u>underlined</u> language and remove language with strikethrough.</p> <p>“To protect nesting birds that are likely to occur within or adjacent to the project site, project activities should be</p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>

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	<p>initiated outside of the nesting season between September 1 and January 31 (<u>as early as January 1 for some raptors</u>). If project activities <u>must be initiated during the nesting season, a nesting bird survey shall be conducted by a qualified biologist no more than seven days prior to the start of project activities. 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 passerine (perching birds and songbirds) nests, 500 feet around non-listed raptor nests and 0.5 mile around listed bird nests.</u> If nesting birds are encountered, an appropriate buffer will be established <u>by a qualified biologist</u> around the nest to avoid potential take of the nest. A biological monitor will track the progress of the nest and will remove the buffer once nesting is complete <u>and fledglings have left the nest</u>. No work will be permitted within the buffer.”</p>		
<p>REC-10-Rodenticides</p>	<p>Rodenticides and second-generation anticoagulant rodenticides should be prohibited both during and over the life of the Project.</p>	<p>Prior to/During/After Project construction and activities</p>	<p>City/Project Applicant</p>