



STATE OF CALIFORNIA • NATURAL RESOURCES AGENCY Gavin Newson, Governor
DEPARTMENT OF FISH AND WILDLIFE Charlton H. Bonham, Director

South Coast Region
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June 5, 2023

Jocelyn Swain
44933 Fern Ave
Lancaster, CA 93534

Subject: Mitigated Negative Declaration for Conditional Use Permit No. 23-001 (J90 South Energy Storage Project), SCH #2023050268, City of Lancaster, Los Angeles County

Dear Ms. Swain:

The California Department of Fish and Wildlife (CDFW) has reviewed the Conditional Use Permit (CUP) 23-001 (Project) proposed by the City of Lancaster (City). Supporting documentation for the Project includes the *Biological Technical Report For The J90 South Energy Solar Project, City Of Lancaster, California* (BTR) dated October 2022. The Project is proposed from J90 ESS, LLC/Kevin Butler (Project Applicant). 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.

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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

Objective: J90 ESS, LLC proposes to construct, own, and operate the J90 South Energy Storage Project, a battery energy storage facility and associated ancillary services. The Project will comprise of battery modules installed in racks housed in purpose-built outdoor Battery Energy Storage System (BESS) enclosures and associated equipment. It will also include a project substation and a generation tie-line (gen-tie) connecting the Project to the adjacent existing Southern California Edison (SCE) Antelope Substation.

Location: The approximately 19.6-acre Project site is located on two parcels, Assessor's Parcel Numbers 3203-034-010 and 3203-034-011, measuring 9.28 and 10.31 acres respectively, along 90th Street West near the Del Sur neighborhood in the City of Lancaster, Los Angeles County, California.

Comments and Recommendations

The City submitted Project-related documents for an informal consultation with CDFW on January 23, 2023 [CEQA Guidelines, § 15063(g)]. The Biological Technical Report (BTR) was dated 2022. CDFW submitted a consultation comment letter on February 13, 2023.

CDFW again offers further comments and recommendations below to assist the City in adequately identifying the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the City consider our comments and recommendations when preparing an environmental document that may provide adequate and complete disclosure of the Project's potential impacts on biological resources [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151].

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Specific Comments

Comment #1: Impacts to Swainson's Hawk (*Buteo swainsoni*)

Issue: The Project may impact foraging habitat for Swainson's hawk.

Specific impacts: Swainson's hawk are regularly observed foraging throughout the Palmdale and Lancaster area. The Project may potentially result in the loss of foraging habitat for a CESA-listed raptor species.

Why impact would occur: The MND states that "Limited potential foraging opportunities and no nesting sites are present within the survey area or project boundaries. Based on the CNDDDB, a nesting pair of Swainson's hawks was identified in a cottonwood tree adjacent to an orchard approximately 2.25 miles northwest of the gen-tie line route (2011) and 3.15 miles northwest of the project site." Despite foraging opportunities present within the Project area, the MND does not provide avoidance measures to minimize the impacts to Swainson's hawk. Aside from no avoidance measures in the MND, no protocol-level focused survey was conducted for Swainson's hawk presence. If a protocol-level Swainson's hawk survey was conducted, there is potential that species presence may be observed. Project activities without surveys could result in injury or mortality of unidentified Swainson's hawk. Lastly, Project construction activities will result in loss of habitat if Swainson's hawk are present and foraging.

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

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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 #1: 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., incidental take permit (ITP))] would be required for the Project. CDFW may consider the Lead Agency's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.

Mitigation Measure #2: 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 conservation methods. For proposed preservation and/or restoration, the final environmental document should include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include, but are not limited to, restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be provided for the long-term monitoring and management of mitigation lands. CDFW recommends that mitigation occur at a CDFW-approved bank or via an entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012), which 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.

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Comment #2: Impacts to Streams

Issue: Project activities may impact ephemeral streams on the Project site.

Specific impacts: Development on the Project site may result in erosion and earth movement that could impair ephemeral streams/swales across the site.

Why impacts would occur: The MND states, "Several non-jurisdictional swale features were documented within the project site. The swales are non-channelized, shallow depressions that carry surface water immediately following a rain event. The swale features appear to be isolated and do not connect to any waters in the surrounding area. Therefore, no impacts to jurisdictional waters would occur." However, under Fish and Game Code section 1600, "any river, stream, or lake" includes those that are dry for periods of time as well as those that flow year-round. Despite the swales being "shallow depressions", water is still conveyed during rain events in these areas on site. Figure 5 of the BTR indicates the swales flow across the majority of the site. The MND does not indicate a hydrological evaluation was conducted, but only that the swales "appear to be isolated". Without a proper hydrological evaluation, it is possible the MND erroneously concludes lack of connectivity. Therefore, the Project may be subject to notification pursuant to Fish and Game Code section 1600 et seq.

Evidence impacts would be significant: CDFW exercises its regulatory authority as provided by Fish and Game Code section 1600 et seq. to conserve fish and wildlife resources which includes rivers, streams, or lakes and associated natural communities. Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

- Divert or obstruct the natural flow of any river, stream, or lake;
- Change the bed, channel, or bank of any river, stream, or lake;
- Use material from any river, stream, or lake; or,
- Deposit or dispose of material into any river, stream, or lake.

CDFW requires a Lake and Streambed Alteration (LSA) Agreement when a project activity may substantially adversely affect fish and wildlife resources. The Project may result in significant impacts on streams and associated natural communities because of the upslope proximity to these resources. Without appropriate mitigation, the Project continues to have a substantial adverse

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direct, indirect, and cumulative effect, either directly or through habitat modifications, on fish and wildlife resources, including rivers, streams, or lakes and associated natural communities identified by CDFW.

Recommended Potentially Feasible Mitigation Measures:

Mitigation Measure #3: CDFW recommends the City require the Project applicant to notify CDFW pursuant to Fish and Game Code 1602 and obtain an LSA Agreement from CDFW prior to obtaining a grading permit. The Project applicant should comply with the mitigation measures detailed in an LSA Agreement issued by CDFW. The Project applicant should also provide compensatory mitigation at no less than 2:1 for the impacted stream and associated natural community, or at a ratio acceptable to CDFW. Please visit CDFW's [Lake and Streambed Alteration Program](#) webpage for more information (CDFWa 2023).

Mitigation Measure #4: CDFW recommends the LSA Notification include a hydrology report to evaluate whether altering upslope vegetation within the Project site may impact hydrologic activity downslope and downstream of the Project site. The hydrology report should also include an analysis to determine if Project activities will impact the current hydrologic regime or change the velocity of flows entering the ephemeral streams and downstream. CDFW also requests a hydrological evaluation of any potential scour or erosion at the Project site and downstream due to a 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions to determine how the Project activities may change the hydrology on site.

Mitigation Measure #5: CDFW recommends that any Best Management Practice (BMPs) infrastructure that are installed should be monitored and repaired, if necessary, to ensure maximum erosion, sediment, and pollution control. The Project applicant should prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within stream areas. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site should be free of nonnative plant materials. Fiber rolls or erosion control mesh should be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.

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Recommendation #1: CDFW's issuance of an LSA Agreement for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the lead agency/project applicant for the project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, a project's CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. To compensate for any on- and off-site impacts to aquatic and riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures; avoidance of resources; protective measures for downstream resources; on- and/or off-site habitat creation; enhancement or restoration; and/or protection and management of mitigation lands in perpetuity.

Comment #3: Impacts on Species of Special Concern - Reptiles

Issue: The Project may impact Northern California legless lizards (*Anniella pulchra*), a species 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 (trampling, crushing), reduced reproductive capacity, population declines, or local extirpation of an SSC. Also, loss of foraging, breeding, or nursery habitat for an SSC may occur.

Why impacts would occur: A review of the California Natural Diversity Database (CNDDDB), indicates multiple occurrences of Northern California legless lizards (*Anniella pulchra*) within three miles of the Project vicinity. However, reptile SSC were not discussed in the MND. As such, there is potential for the Project to impact SSC. Without appropriate avoidance or minimization measures, impacts to an SSC could result from ground-disturbing activities and vegetation removal. Wildlife may be trapped or crushed under structures. Large equipment, equipment and material staging, and vehicle and foot traffic could trample or bury wildlife. SSC could be injured or killed. Impacts on these SSC are more likely to occur because these are cryptic species that are less mobile and seek refuge under structures.

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

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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 (CDFWb 2023).

CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC that 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).

Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. The MND does not provide mitigation for potential impacts on SSC. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure(s):

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

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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 (CDFWc 2023). Pursuant to the [California Code of Regulations, title 14, section 650](#), the Project Applicant/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. The LSA Agreement may provide similar take or possession of species as described in the conditions of the agreement (see Comment #2 Impacts on Streams).

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 SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW and the City within three calendar days of the incident or finding. The report should include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper

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notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

Comment #4: Inadequate Disclosure of Adequacy of Biological Impact Fee

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

Specific Impacts: The Project would develop approximately 20 acres of land. This would result in permanent loss of habitat that may support rare plants and/or SSCs.

Why impacts would occur: According to page 28 in the MND, the Project's cumulative impacts on biological resources in the Antelope Valley would be mitigated through payment of a \$770/acre Biological Impact Fee. The Biological Impact Fee would "offset the cumulative loss of biological resources in the Antelope Valley as a result of development." The MND concludes that "no impacts would occur" with payment of the Biological Impact Fee. The MND does not explain or make a connection as to why payment of the Biological Impact Fee is adequate to offset Project impacts so that the Project would not have a cumulative impact on biological resources in the Antelope Valley. The MND does not discuss or provide the following information:

- 1) Whether the Biological Impact Fee is going towards an established program;
- 2) How that program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA;
- 3) What the Biological Impact Fee would acquire. It is unclear if the Biological Impact Fee would be used to acquire land for preservation, enhancement, and/or restoration purposes, or if the Biological Impact Fee would be used to purchase credits at a mitigation bank, or none of the above;
- 4) What biological resources would the Biological Impact Fee protect/conserve;
- 5) Why the Biological Impact Fee is appropriate for mitigating cumulative loss of biological resources in the Antelope Valley;
- 6) How \$770/acre is sufficient to purchase land or credits at a mitigation bank;

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- 7) Where the City may acquire land or purchase credits at a mitigation bank so that the Biological Impact Fee would offset Project impacts on biological resources in the Antelope Valley;
- 8) When the City would use the Biological Impact Fee. Mitigation payment does not equate to mitigation if the funds are not being used. Also, temporal impacts on biological resources may occur as long as the City fails to implement its proposed mitigation;
- 9) How the City would commit the Project to paying the Biological Impact Fee. For example, when would the City require payment, how long would the Project Applicant have to pay the fee, and what mechanisms would the City implement to ensure the fee is paid? Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines, § 15126.4).
- 10) What performance measures the proposed mitigation would achieve (CEQA Guidelines, § 15126.4);
- 11) What type(s) of potential action(s) that can feasibly achieve those performance standards (CEQA Guidelines, § 15126.4); and
- 12) How the Biological Impact Fee would be adequate such that the Project would not have a cumulative impact on biological resources in the Antelope Valley.

Evidence impacts would be significant: The basic purpose of an environmental document is to provide public agencies and the public in general with detailed information about the effect a proposed project is likely to have on the environment, and ways and manners in which the significant effects of such a project might be minimized (Pub. Resources Code, §§ 21002.1, 21061). The MND is insufficient as an informational document because it fails to discuss the ways and manners in which the Biological Impact Fee would mitigate for the Project's cumulative impacts on biological resources in the Antelope Valley. Mitigation measures should be adequately discussed and the basis for setting a particular measure should be identified [CEQA Guidelines, § 15126.4(a)(1)(B)]. The MND does not provide enough information to facilitate meaningful public review and comment on the appropriateness of the Biological Impact Fee at mitigating for impacts on biological resources. This Project may have a significant effect on the environment because the Project may reduce habitat for rare plants or wildlife; cause rare plants or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; and substantially reduce the number or restrict the range of an endangered, rare, or threatened species [CEQA Guidelines, § 15065(a)(1)]. Furthermore, the Project may contribute to the ongoing loss of sensitive, special status, threatened, and/or endangered plants, wildlife, and natural communities in the Antelope Valley.

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The Project may have possible environmental effects that are cumulatively considerable [CEQA Guidelines, § 15065(a)(3)]. The City is acknowledging that the Project would contribute to the cumulative loss of biological resources in the Antelope Valley because the City is proposing a Biological Impact Fee as compensatory mitigation. The Biological Impact Fee may be inadequate mitigation absent commitment, specific performance standards, and actions to achieve performance standards. Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status in local or regional plans, policies, or regulations, or by CDFW or USFWS.

Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #2: CDFW recommends the City revise the MND to provide adequate, complete, and good-faith disclosure of information that would address the following in relation to the Project:

- 1) Whether the Biological Impact Fee is going towards an established program;
- 2) How the Biological Impact Fee/program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA;
- 3) What the Biological Impact Fee would acquire;
- 4) What biological resources would the Biological Impact Fee protect/conserve;
- 5) Why the Biological Impact Fee is appropriate for mitigating the cumulative loss of biological resources in the Antelope Valley;
- 6) Why the Biological Impact Fee is sufficient to purchase land or credits at a mitigation bank;
- 7) Where land would be acquired or where the mitigation bank is located;
- 8) When the Biological Impact Fee would be used; and,
- 9) How the Biological Impact Fee would be adequate such that the Project would not have a cumulative impact on biological resources in the Antelope Valley. The MND should provide any technical data, maps, plot plans, diagrams, and similar relevant information in addressing these concerns (CEQA Guidelines, § 15147).

Recommendation #3: The MND should include a discussion describing commitment to mitigation via the Biological Impact Fee. For example, the MND should provide specifics as to when the City would pay the Biological Impact Fee; what mechanisms the City would implement to ensure the Biological

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Impact Fee is paid; and when and where the Biological Impact Fee would be used to offset the Project's impacts. Also, the MND should provide specific performance standards as well as actions to achieve those performance standards.

Additional Recommendations

Recommendation #4: CDFW recommends modifying Mitigation Measure #2 on page 27 of the MND to include underlined language and remove language with strikethrough.

"To protect nesting birds that may occur within and in areas adjacent to the Project site, Project construction should occur between September 1 through January 31, outside of the nesting bird season or to the greatest extent possible. The Project Applicant should not remove or disturb trees or vegetation during the bird nesting season, which generally runs from February 15 through September 15 (as early as January 1 for some raptors) to avoid take of birds, raptors, or their nests, eggs, or nestlings. If Project construction and activities must occur during the bird nesting season, the Project Applicant should retain a qualified biologist to conduct a nesting bird survey. A nesting bird survey shall be conducted by a qualified biologist within 7 days prior to the start of construction/ground disturbing activities (e.g., grading, building, electrical, etc.). If active bird nests are identified during the survey, the applicant shall either delay work in the area of the nest until all birds have fledged and/or left the nest or a buffer shall be established around the nest. A minimum buffer of 500 feet shall be installed around active raptor nests and 50 feet around other migratory bird species."

Please be advised that CDFW does not issue permits for take of bird and raptor nests, eggs, or nestlings.

Recommendation #5: 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](#) (CDFWd 2023). 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

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Program (CDFWe 2023).

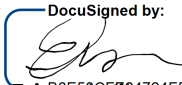
Recommendation #6: Rodenticides and second-generation anticoagulant rodenticides should be prohibited both during and over the life of the Project.

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 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:

Erin Wilson-Olgin
Environmental Program Manager I

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State Clearinghouse - state.clearinghouse@opr.ca.gov

References:

- Bloom, P. H. 1980. The status of the Swainson's hawk in California, 1979. Bureau of Land Management, Sacramento, CA, USA.
- California Department of Fish and Wildlife [CDFW]. June 2, 2010. 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). (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>).
- California Department of Fish and Wildlife [CDFW]. 2016. Status review: Swainson's hawk (*Buteo swainsoni*) in California. Report to the California Fish and Game Commission, Sacramento, CA, USA.
- [CDFWa] California Department of Fish and Wildlife. 2023. Lake and Streambed Alteration Program. Available from: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>
- [CDFWb] California Department of Fish and Wildlife. 2023. Scientific Collecting Permit. Available from: <https://wildlife.ca.gov/Licensing/Scientific-Collecting#53949678>
- [CDFWc] California Department of Fish and Wildlife. 2023. Species of Special Concern. Available from: <https://wildlife.ca.gov/Conservation/SSC>
- [CDFWd] California Department of Fish and Wildlife. 2023. Submitting Data to the CNDDDB. Available from: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.
- [CDFWe] California Department of Fish and Wildlife. 2023. Combined Rapid Assessment and Releve Form. Available from: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

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Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into the Project's environmental document.

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		Timing	Responsible Party
MM-BIO-1-Swainson's Hawk	<p>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). Focused surveys shall be conducted 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., incidental take permit (ITP))] would be required for the Project. CDFW may consider the Lead Agency's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.</p>	Prior to issuance of development permit	City of Lancaster (City)/Project Applicant
MM-BIO-2-Swainson's Hawk	<p>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 conservation methods. For proposed preservation and/or restoration, the final environmental document shall include</p>	Prior to issuance of development permit	City/Project Applicant

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	<p>measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. The objective shall be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that shall be addressed include, but are not limited to, restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment shall be provided for the long-term monitoring and management of mitigation lands. Mitigation shall occur at a CDFW-approved bank or via an entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012), which 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.</p>		
MM-BIO-3- Impacts to Streams	<p>The Project applicant shall be required to notify CDFW pursuant to Fish and Game Code 1602 and obtain an LSA Agreement from CDFW prior to obtaining a grading permit. The Project applicant should comply with the mitigation measures detailed in an LSA Agreement issued by CDFW. The Project applicant should also provide compensatory mitigation at no less than 2:1 for the impacted stream and associated natural community, or at a ratio acceptable to CDFW. Please visit CDFW's Lake and Streambed Alteration Program webpage for more information (CDFWa 2023).</p>	Prior to issuance of development permit	City/Project Applicant
MM-BIO-4- Impacts to Streams	<p>The LSA Notification shall include a hydrology report to evaluate whether altering upslope vegetation within the Project site may impact hydrologic activity downslope and downstream of the Project site. The hydrology report should</p>	Prior to issuance of development permit	City/Project Applicant

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	<p>also include an analysis to determine if Project activities will impact the current hydrologic regime or change the velocity of flows entering the ephemeral streams and downstream. CDFW also requests a hydrological evaluation of any potential scour or erosion at the Project site and downstream due to a 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions to determine how the Project activities may change the hydrology on site.</p>		
<p>MM-BIO-5- Impacts to Streams</p>	<p>Any BMPs installed shall be monitored and repaired, if necessary, to ensure maximum erosion, sediment, and pollution control. The Project proponent should prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within stream areas. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site should be free of nonnative plant materials. Fiber rolls or erosion control mesh should be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.</p>	<p>Prior to issuance of development permit</p>	<p>City/Project Applicant</p>
<p>REC-1-LSA Agreement</p>	<p>CDFW's issuance of an LSA Agreement for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the lead agency/project applicant for the project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 et seq. and/or under CEQA, a project's CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. To</p>	<p>Prior to issuance of development permit</p>	<p>City/Project Applicant</p>

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	compensate for any on- and off-site impacts to aquatic and riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures; avoidance of resources; protective measures for downstream resources; on- and/or off-site habitat creation; enhancement or restoration; and/or protection and management of mitigation lands in perpetuity		
MM-BIO-6- Biological Monitor	To avoid direct injury and mortality of SSC, the City shall 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 (once every two weeks) for the remainder of Project until the cessation of all ground disturbing activities to ensure that no wildlife is harmed.	Prior to Project ground disturbing activities	City/Project Applicant
MM-BIO-7- Scientific Collecting Permit	The City shall 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	Prior to Project ground disturbing activities	City/Project Applicant

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	<p>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 2022d). Pursuant to the California Code of Regulations, title 14, section 650, the Project Applicant/qualified biologist must obtain appropriate handling permits to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with Project construction and activities. The LSA Agreement may provide similar take or possession of species as described in the conditions of the agreement.</p>		
<p>MM-BIO-8- Wildlife Relocation Plan</p>	<p>Prior to initial ground and habitat disturbing activities and vegetation removal, the Project Applicant shall retain a qualified biologist to prepare a Wildlife Relocation Plan. The Wildlife Relocation Plan shall describe all wildlife species that could occur within the Project site and proper handling and relocation protocols. The Wildlife Relocation Plan shall include species-specific relocation areas, at least 200 feet outside of the Project site and in suitable and safe relocation areas. The Project Applicant shall submit a copy of a Wildlife Relocation Plan to the City prior to initial ground and habitat disturbing activities and vegetation removal. No bird nests, eggs, or nestlings may be removed or relocated at any time.</p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>
<p>MM-BIO-10- 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),</p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>

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	<p>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>REC-2- Biological Impact Fee</p>	<p>CDFW recommends the City revise the MND to provide adequate, complete, and good-faith disclosure of information that would address the following in relation to the Project:</p> <ol style="list-style-type: none"> 1) Whether the Biological Impact Fee is going towards an established program; 2) How the Biological Impact Fee/program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA; 3) What the Biological Impact Fee would acquire; 4) What biological resources would the Biological Impact Fee protect/conserve; 5) Why the Biological Impact Fee is appropriate for mitigating the cumulative loss of biological resources in the Antelope Valley; 6) Why the Biological Impact Fee is sufficient to purchase land or credits at a mitigation bank; 7) Where land would be acquired or where the mitigation bank is located; 8) When the Biological Impact Fee would be used; and, How the Biological Impact Fee would be adequate such that the Project would not have a cumulative impact on biological resources in the Antelope Valley. The MND should provide any technical data, maps, plot plans, diagrams, and similar relevant information in addressing these concerns (CEQA Guidelines, § 15147). 	<p>Prior to finalizing CEQA document</p>	<p>City/Project Applicant</p>

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<p>REC-3- Biological Impact Fee</p>	<p>The MND should include a discussion describing commitment to mitigation via the Biological Impact Fee. For example, the MND should provide specifics as to when the City would pay the Biological Impact Fee; what mechanisms the City would implement to ensure the Biological Impact Fee is paid; and when and where the Biological Impact Fee would be used to offset the Project's impacts. Also, the MND should provide specific performance standards as well as actions to achieve those performance standards.</p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>
<p>REC-4-Nesting Birds</p>	<p>CDFW recommends modifying Mitigation Measure #2 on page 27 of the MND to include <u>underlined</u> language and remove language with strikethrough.</p> <p><u>"To protect nesting birds that may occur within and in areas adjacent to the Project site, Project construction should occur between September 1 through January 31, outside of the nesting bird season or to the greatest extent possible. The Project Applicant should not remove or disturb trees or vegetation during the bird nesting season, which generally runs from February 15 through September 15 (as early as January 1 for some raptors) to avoid take of birds, raptors, or their nests, eggs, or nestlings. If Project construction and activities must occur during the bird nesting season, the Project Applicant should retain a qualified biologist to conduct a nesting bird survey. A nesting bird survey shall be conducted by a qualified biologist within 30 7 days prior to the start of construction/ground disturbing activities. If active bird nests are identified during the survey, all work shall cease until the young birds have fledged. If special status species are found, the applicant shall contact the California Department of Fish and Wildlife to</u></p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>

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	<p>determine the appropriate mitigation/management requirements. Impacts to nesting birds will be avoided by delay of work or establishing a buffer of 500 feet around active raptor nests and 50 feet around other migratory bird species."</p> <p>Please be advised that CDFW does not issue permits for take of bird and raptor nests, eggs, or nestlings.</p>		
REC-5-CNNDDB	<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 CNDDDB Field Survey Forms (CDFWd 2023). 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 (CDFWe 2023).</p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>
REC-6-Rodenticide	<p>Rodenticides and second-generation anticoagulant rodenticides should be prohibited both during and over the life of the Project.</p>	<p>Prior to Project ground disturbing activities</p>	<p>City/Project Applicant</p>