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DEPARTMENT OF FISH AND WILDLIFE Charlton H. Bonham, Director

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Governor's Office of Planning & Research

Jul 18 2023

STATE CLEARINGHOUSE

July 17, 2023

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Subject: Mitigated Negative Declaration for Site Plan Review No. 22-11 Tentative Administrative Parcel Map No. 083994, SCH #2023060450, City of Lancaster, Los Angeles County

Dear Ms. Campaña:

The California Department of Fish and Wildlife (CDFW) has reviewed the Site Plan Review No. 22-11 Tentative Administrative Parcel Map No. 083994 (Project) proposed by the City of Lancaster (City). Supporting documentation for the Project includes the *Biological Technical Report For The Forbes Industrial Property Project* (BTR) dated January 31, 2023. The Project is proposed by Lancaster Forbes 12, LLC (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: The proposed Project consists of an application for a Site Plan Review (SPR No. 22-11) and a Tentative Administrative Parcel Map (TAPM). TAPM No. 083994 is a proposed map to subdivide the property into two parcels. SPR 22-11 would allow for the construction and operation of two buildings proposed for light industrial and general warehousing uses with a combined total building area of 233,600 square feet. Other physical features include drive aisles, parking areas, truck courts, access gates, landscaping, lighting, screening walls, fencing, and signage.

Location: The 11.83-acre Project site is generally located west of Sierra Highway, north of West Avenue L-8, and south of Enterprise Way, in the City of Lancaster, California.

Comments and Recommendations

CDFW offers 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].

Specific Comments

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

Issue: The Project will impact western Joshua tree.

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Specific impacts: The Project would remove one western Joshua tree and impact an undisclosed acreage of western Joshua tree seedbank. The Project may alter on-site hydrology, which could also impact western Joshua tree and seedbank.

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 a western Joshua tree, 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.

CDFW agrees with BIO MM-1, which states that prior to any ground disturbing activities, the Project Applicant shall obtain an Incidental Take Permit (ITP). 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 remove the western Joshua tree on site, it is unclear how impacts on western Joshua tree and seedbank would occur. 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.

Additionally, BIO MM-1 suggests translocation as a primary means of mitigation. Translocation and plant salvage should be considered experimental in nature and not be considered as a measure to mitigate for rare, endangered, and threatened plants below a significant level under CEQA (Fiedler 1991; Fahselt 2007; Godefroid 2010). CDFW generally does not support the use of translocation, transplantation, or salvaging plants as the primary mitigation strategy for unavoidable impacts to rare, endangered, and threatened plants. Studies have shown that these efforts are experimental and the outcome unreliable (CNPS 1998). CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and their habitats. Additionally, rare, endangered, and threatened plants are habitat specialists that require specific habitat conditions to exist and persist. Moving rare plants to an area that does not support habitat for rare plants could result in loss of those salvaged plants.

Lastly, success criteria and performance standards have yet to be provided. BIO MM-1 has yet to 1) have the City commit the Project Applicant to mitigation, 2)

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adopt specific performance standards the mitigation will achieve, and 3) identify the types of potential actions that can feasibly achieve that performance standard (CEQA Guidelines, § 15126.4).

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, or 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 may continue 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 BIO MM-1 in the MND, which the City would require the Project Applicant to obtain an ITP from CDFW for incidental take of western Joshua trees. The Project Applicant should submit an ITP Application to CDFW that provides the following information (at a minimum):

1. An analysis of the individual western Joshua tree (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 \(MCV\)](#), second edition (Sawyer et al. 2023);
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 the Project could impact any in-situ western Joshua trees adjacent to the Project site.

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

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increasing through seedling recruitment. Mitigation lands provided by the Project Applicant 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 off-highway vehicle (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 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: 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.

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Comment #2: 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 "The Project site provides suitable foraging and breeding habitat for a number of raptor species, including special-status raptors." Despite foraging opportunities present within the Project area, the MND does not provide avoidance measures to minimize the impacts specifically 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 5-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 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.

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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., 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 #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 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.

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

Issue: The Project may impact coast horned lizard (*Phrynosoma blainvillii*) and Northern California legless lizards (*Anniella pulchra*), species designated as

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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 SSC. Also, loss of foraging, breeding, or nursery habitat for SSC may occur.

Why impacts would occur: A review of the California Natural Diversity Database (CNDDDB), indicates multiple occurrences of Northern California legless lizards and coast horned lizard within 3 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 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 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 (CDFWa 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

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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 2 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 (CDFWb 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.

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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 3 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: 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 12 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 BIO MM-5 on page 31 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 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;

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- 2) How that program is designed to (and will) mitigate the effects at issue at a level meaningful for purposes of CEQA;
- 3) What the Biological Impact Fee would acquire. It is unclear if the Biological Impact Fee would be used to acquire land for preservation, enhancement, and/or restoration purposes, or if the Biological Impact Fee would be used to purchase credits at a mitigation bank, or none of the above;
- 4) What biological resources would the Biological Impact Fee protect/conserve;
- 5) Why the Biological Impact Fee is appropriate for mitigating cumulative loss of biological resources in the Antelope Valley;
- 6) How \$770/acre is sufficient to purchase land or credits at a mitigation bank;
- 7) Where the City may acquire land or purchase credits at a mitigation bank so that the Biological Impact Fee would offset Project impacts on biological resources in the Antelope Valley;
- 8) When the City would use the Biological Impact Fee. Mitigation payment does not equate to mitigation if the funds are not being used. Also, temporal impacts on biological resources may occur as long as the City fails to implement its proposed mitigation;
- 9) How the City would commit the Project to paying the Biological Impact Fee. For example, when would the City require payment, 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

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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. 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. 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

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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 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 the use of native plants for any project proposing revegetation and landscaping. CDFW strongly recommends avoiding non-native, invasive plants for landscaping, particularly any species listed as 'Moderate' or 'High' by the California Invasive Plant Council (Cal-IPC 2022). CDFW recommends the use of native species found in naturally occurring plant communities within or adjacent to the Project area. Finally, CDFW recommends planting species of vegetation with high insect and pollinator value.

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](#) (CDFWc 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 (CDFWd 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

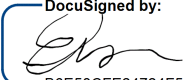
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implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per 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:

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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. Scientific Collecting Permit. Available from: <https://wildlife.ca.gov/Licensing/Scientific-Collecting#53949678>
- [CDFWb] California Department of Fish and Wildlife. 2023. Species of Special Concern. Available from: <https://wildlife.ca.gov/Conservation/SSC>
- [CDFWc] California Department of Fish and Wildlife. 2023. Submitting Data to the CNDDDB. Available from: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.
- [CDFWd] California Department of Fish and Wildlife. 2023. Combined Rapid Assessment and Releve Form. Available from: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>
- Fahselt, D. 2007. Is transplanting an effective means of preserving vegetation? Canadian Journal of Botany 85: 1007-1017.
- Fiedler, P.L. 1991. Mitigation-Related Transplantation, Relocation and Reintroduction Projects Involving Endangered and Threatened, and Rare Plant Species in California. Final Report (unpublished). <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=3173>
- Godefroid, S., et al. 2011. How successful are plant species reintroductions? Biological Conservation 144: 672-682.
- [MCV]. A Manual of California Vegetation, 2nd ed. (2023) Available from: <https://vegetation.cnps.org/>

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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) | | | |
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| Mitigation Measure (MM) or Recommendation (REC) | | Timing | Responsible Party |
| MM-BIO-1- Impacts to Joshua tree- CESA ITP | <p>The City will require the Project Applicant to obtain an ITP from CDFW for incidental take of western Joshua trees. The Project Applicant shall submit an ITP Application to CDFW that provides the following information (at a minimum):</p> <ol style="list-style-type: none"> 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 |
| MM-BIO-2- Impacts to Joshua tree- survey and | <p>The Project Applicant shall provide compensatory mitigation for the Project's impact on western Joshua trees at no less than 2:1, or as required in an 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</p> | Prior to issuance of development permit | City/Project Applicant |

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| <p>impact assessment</p> | <p>through seedling recruitment. Mitigation lands provided by the Project Applicant 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>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 fully acquired,</p> | <p>Prior to issuance of development permit</p> | <p>City/Project Applicant</p> |

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| | established, transferred, or otherwise executed prior to impacts on western Joshua trees. | | |
| MM-BIO-4-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-5-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 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</p> | Prior to issuance of development permit | City/Project Applicant |

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| | <p>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> | | |
| <p>MM-BIO-6- Biological Monitor</p> | <p>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.</p> | <p>Prior to Project ground disturbing activities</p> | <p>City/Project Applicant</p> |
| <p>MM-BIO-7- Scientific Collecting Permit</p> | <p>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</p> | <p>Prior to Project ground disturbing activities</p> | <p>City/Project Applicant</p> |

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| | <p>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 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</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-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</p> | <p>Prior to Project ground disturbing activities</p> | <p>City/Project Applicant</p> |

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| | 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. | | |
| REC-1-ITP Issuance | 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. | Prior to finalizing CEQA document | City/Project Applicant |
| REC-2-Biological Impact Fee | 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: <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 | Prior to finalizing CEQA document | City/Project Applicant |

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| | <p>meaningful for purposes of CEQA;</p> <ol style="list-style-type: none"> 3) What the Biological Impact Fee would acquire; 4) What biological resources would the Biological Impact Fee protect/conservate; 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). | | |
| REC-3- Biological Impact Fee | <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> |
| REC-4- Landscaping | <p>CDFW recommends the use of native plants for any project proposing revegetation and landscaping. CDFW strongly recommends avoiding non-native, invasive plants for landscaping, particularly any species</p> | <p>Prior to Project ground disturbing activities</p> | <p>City/Project Applicant</p> |

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| | <p>listed as 'Moderate' or 'High' by the California Invasive Plant Council (Cal-IPC 2022). CDFW recommends the use of native species found in naturally occurring plant communities within or adjacent to the Project area. Finally, CDFW recommends planting species of vegetation with high insect and pollinator value.</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> |