



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

South Coast Region
3883 Ruffin Road | San Diego, CA 92123
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Via Electronic Mail Only

August 16, 2023

Jocelyn Swain
City of Lancaster
44933 Fern Avenue
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**Subject: Tentative Tract Map No. 83572, Mitigated Negative Declaration,
SCH #2023070372, City of Lancaster, Los Angeles County**

Dear Ms. Swain:

The California Department of Fish and Wildlife (CDFW) has reviewed a Mitigated Negative Declaration (MND) from the City of Lancaster (City) for Tentative Tract Map No. 83572 (Project). The Project Applicant for the Project is Civil Design and Drafting, Inc. 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 is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 *et seq.*). Likewise, to the extent implementation of the Project as proposed may result in “take”, as defined by State law, of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, § 1900 *et seq.*), CDFW recommends the Project Applicant obtain appropriate authorization under the Fish and Game Code.

PROJECT DESCRIPTION AND SUMMARY

Objective: The Project proposes to subdivide approximately 30 acres for the construction of 118 single-family residential lots and one drainage basin lot. The lots would vary in size from 7,021 square-feet to 12,376 square-feet. The drainage basin lot will be 11,878 square-feet and retain runoff from within the subdivision. Construction activities will also involve installation of private roads, utilities, and associated infrastructure. Access to the Project site would be from 35th Street East, Lancaster Boulevard, and Kettering Street. Moreover, a six-foot block wall will be installed along 35th Street East and Lancaster Boulevard as well as a meandering sidewalk and landscaping.

Location: The Project site encompasses undeveloped land located in the northeast corner of 35th Street East and East Lancaster Boulevard in the City of Lancaster, Los Angeles County. The Project site is bound by 35th Street East to the west, East Lancaster Boulevard to the south, and vacant land to the east and north. The Assessor's Parcel Numbers associated with the Project site include 3150-021-028 and 3150-021-029.

COMMENTS AND RECOMMENDATIONS

The City provided a Biological Resources Report Update (BRR) and a tentative tract map for a preconsult review of the proposed Project on June 22, 2022. CDFW submitted our comments for the Project to the City on July 15, 2022. CDFW comments for the proposed Project addressed potential impacts on Swainson's hawk (*Buteo swainsoni*), desert tortoise (*Gopherus agassizii*), burrowing owl (*Athene cunicularia*), Mohave ground squirrel (*Xerospermophilus mohavensis*), mountain plover (*Charadrius montanus*), and nesting birds. Upon review of the BRR and MND, the species listed in our previous comments were addressed; however, the comments below detail species that were insufficiently

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

Specific Comments

Comment #1: Impacts to Mohave Ground Squirrel

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

Specific Impacts: Project construction and activities (e.g., equipment staging, mobilization, and grading) may result in mortality or injury to Mohave ground squirrel. Project ground-disturbing activities such as vegetation removal may result in habitat destruction within the Project site and may contribute to further habitat decline within the range for this species.

Why Impacts would occur: Mohave ground squirrels have been documented historically to occur within the Antelope Valley region. According to the [California Natural Diversity Database](#) (CNDDDB), Mohave ground squirrel has been observed within three miles of the Project site (CDFW 2023a). The Project site is surrounded to the north, east, and west by undeveloped land which may support local movement of small wildlife, such as Mohave ground squirrel. The BRR noted that there was no sign of Mojave ground squirrel during the field survey and that presence of this species may not be confirmed without a trapping study. Although no presence of Mohave ground squirrel was observed, the field survey was conducted in May 2021, which is considered outside of the recommended survey period for the species. Given that a trapping study, nor a seasonally appropriate survey were provided, there is potential for Mohave ground squirrel to currently inhabit and utilize the Project site. The MND does not propose avoidance and minimization measures to reduce Project impacts to Mohave ground squirrel. Project activities proceeding based on a false negative and without avoidance measures could result in potential injury or mortality of this species and contribute to permanent loss of habitat.

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Evidence impact would be significant: The Mohave ground squirrel has a restricted geographic range in the western Mojave Desert, where it has suffered from habitat loss as a result of conversion or degradation of native vegetation for residential, industrial, and energy-related developments, agriculture, recreation, and other human uses. On-going development plans, including residential, industrial, energy-related, agricultural, and recreational projects, present a serious threat to remaining Mohave ground squirrel populations (CDFW 2010). CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. Inadequate avoidance, minimization, and mitigation measures for impacts on the Mohave ground squirrel will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on a wildlife species identified as special status by CDFW and USFWS. As to CESA, take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Mohave Ground Squirrel Surveys - A qualified biologist familiar with the species' behavior and life history shall conduct focused surveys for Mohave ground squirrel throughout the Project site. Focused Mohave ground squirrel surveys shall follow the [California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines](#) (CDFW 2003). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall secure an Incidental Take Permit (ITP) for Mohave ground squirrel before ground-disturbing activities commence. The ITP will specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW-approved location and mitigation ratio.

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

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

Comment #2: Impacts on Mountain Plover

Issue: The Project may impact mountain plover, a species designated as California Species of Special Concern (SSC).

Specific impacts: Project construction and activities, directly or through habitat modification, may result in loss of wintering grounds for mountain plover. Project activities may also result in direct injury or mortality of the species, wintering population declines, and loss of foraging opportunities.

Why impacts would occur: Mountain plover is a small sized avian species that prefers open spaces with sparse vegetation, and has been recorded throughout Antelope Valley. Mountain plover breed outside of California but migrate and winter in California from September to March (CDFW 2008). According to CNDDDB, recent observations of mountain plover has been recorded within two miles of the Project site (CDFW 2023a). Additionally, [iNaturalist](#) has recorded observations of mountain plover within the cities of Palmdale and Lancaster (iNaturalist 2023). Although mountain plover was not detected on the Project site during the field survey, the survey was conducted in May, which is outside the appropriate period to observe wintering mountain plover. Furthermore, the BRR states that small flocks may use resources on the subject property and adjacent land as an alternative suboptimal wintering ground. Given the recorded observations and potential wintering habitat within the Project site, it is probable that mountain plover may utilize the Project site. However, the MND does not include the BRR's recommendation to survey the Project site for mountain plover prior to grading and ground-disturbing activities. Moreover, the MND does not discuss the Project's impact on mountain plover or wintering habitat within and adjacent to the Project site. Without appropriate avoidance or minimization measures, impacts to mountain plover and loss of wintering habitat could result from ground-disturbing activities and vegetation removal. Habitat loss and degradation of breeding and wintering grounds are two of the main contributors towards the population decline of mountain plover (CDFW 2008). As mentioned in the BRR, land development in eastern Antelope

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Valley, including residential development, contributes to the incremental loss of wintering habitat for the mountain plover.

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:

- 1) If the species is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- 2) If the species is listed as threatened or endangered under Endangered Species Act (ESA)-, but not CESA-, threatened, or endangered;
- 3) If the species meets the State definition of threatened or endangered but has not formally been listed;
- 4) If the species is experiencing, or formerly experienced, serious (nonscyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or
- 5) If naturally small populations exhibit high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2023e).

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. This SSC meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). The MND does not provide mitigation for potential impacts on mountain plover. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species may 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):

Recommendation #1: The MND should discuss the presence of mountain plover on a local and regional scale. The MND should include a discussion describing the Project's potential impact on mountain plover, its wintering habitat within and adjacent to the site, and the Project's potential contribution to the ongoing loss of wintering habitat.

Mitigation Measure #3: Mountain Plover Surveys – The Project Applicant shall retain a qualified biologist to conduct a focused survey for mountain plover.

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Within one year prior to vegetation removal and/or grading, a qualified biologist familiar with the species' behavior and life history shall conduct surveys to determine the presence/absence of mountain plover. Surveys shall be conducted throughout the entire Project site and adjacent land to ensure no missed detection of mountain plover. Surveys should also be conducted during the appropriate season (September - March) when the species is in California and utilizing wintering grounds.

Mitigation Measure #4: Biological Monitor – CDFW recommends the City require the Project Applicant to have a qualified biologist on site to move out of harm's way wildlife that would be injured or killed during ground-disturbing activities. 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. If presence of mountain plover is found on the Project site during the winter season, Project activities should be halted until the species have departed from the site. 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 the Project until the cessation of all ground-disturbing activities to ensure that no wildlife of any kind is harmed.

Mitigation Measure #5: Injured or Dead Wildlife – If any SSC are harmed or a dead or injured animal is found, work in the immediate area shall stop immediately, the qualified biologist should be notified, and dead or injured wildlife documented immediately. A formal report shall be sent to CDFW and the City within 3 calendar days of the incident or finding. The report shall include the date, time of the finding or incident (if known), and location of the carcass or injured animal, and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

Comment #3: Inadequate Disclosure of Adequacy of Biological Impact Fee

Issue: The MND does not provide sufficient information for CDFW to evaluate the adequacy of the \$770/acre fee (Biological Impact Fee) for offsetting cumulative loss of biological resources in the Antelope Valley.

Specific impacts: Development of approximately 30 acres on the Project site may result in permanent loss of habitat that may support burrowing owls, mountain plover, and additional wildlife.

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Why impacts would occur: The Project's cumulative impacts on biological resources in the Antelope Valley would be mitigated through payment of a \$770/acre Biological Impact Fee. According to page 19 of the MND, the Biological Impact Fee would "[...] offset the cumulative loss of biological resources in the Antelope Valley as a result of development. This fee is required of all projects occurring on previously undeveloped land regardless of the biological resources present and is utilized to enhance biological resources through education programs and the acquisition of property for conservation. Therefore, no impacts would occur." The MND does not explain why payment of the Biological Impact Fee is adequate to offset Project impacts so that the Project would have no impacts. Additionally, the MND does not discuss or provide the following information for the Biological Impact Fee:

- 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 and/or conserve;
- 5) Why the Biological Impact Fee is appropriate for mitigating cumulative loss of biological resources in the Antelope Valley;
- 6) If \$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 would the City 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 Applicant to paying the Biological Impact Fee. For example, when would the City require payment from the Project Applicant, how long would the Project Applicant have to pay the fee, and what mechanisms would the City implement to ensure the fee is paid? Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines, § 15126.4);

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- 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 no impacts would occur as a result of the Project.

Evidence impacts would be significant: The basic purpose of an environmental document is to provide public agencies and the public in general with detailed information about the effect a proposed Project is likely to have on the environment, and ways and manners in which the significant effects of such a Project might be minimized (Pub. Resources Code, §§ 21002.1, 21061). The MND is insufficient as an informational document because it fails to discuss the ways and manners in which the Biological Impact Fee would mitigate for the Project's cumulative impacts on biological resources in the Antelope Valley. Mitigation measures should be adequately discussed and the basis for setting a particular measure should be identified [CEQA Guidelines, § 15126.4(a)(1)(B)]. The MND does not provide enough information to facilitate meaningful public review and comment on the appropriateness of the Biological Impact Fee at mitigating impacts to biological resources.

This Project may have a significant effect on the environment because the Project may reduce habitat for rare plants or wildlife; cause rare plants or wildlife population to drop below self-sustaining levels; and/or threaten to eliminate a plant or animal community [CEQA Guidelines, § 15065(a)(1)]. Furthermore, the Project may contribute to the ongoing loss of sensitive, special status, threatened, and/or endangered plants, wildlife, and vegetation communities in the Antelope Valley. The Project may have possible environmental effects that are cumulatively considerable [CEQA Guidelines, § 15065(a)(3)]. The City is acknowledging that the Project would contribute to the cumulative loss of biological resources in the Antelope Valley because the City is proposing a Biological Impact Fee as compensatory mitigation. However, the Biological Impact Fee may be inadequate mitigation absent commitment, specific performance standards, and actions to achieve performance standards. Inadequate avoidance and mitigation measures will result in the Project continuing to have a substantial adverse direct and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS).

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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 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 and/or conserve;
- 5) Why the Biological Impact Fee is appropriate for mitigating cumulative loss of biological resources in the Antelope Valley;
- 6) How is the Biological Impact Fee 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 would the City 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 Applicant to paying the Biological Impact Fee. For example, when would the City require payment from the Project Applicant, how long would the Project Applicant have to pay the Biological Impact Fee, and what mechanisms would the City implement to ensure the Biological Impact 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 no impacts would occur as a result of the Project.

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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 use 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

Burrowing Owl. The MND proposes Mitigation Measure 3 to avoid impacts to burrowing owl; however, the mitigation measure as proposed may be inadequate to reduce the Project impact on burrowing owl to less than significant. CDFW recommends the City revise Mitigation Measure 3 by incorporating the underlined language and removing the language with strikethrough:

A preconstruction burrowing owl survey shall be conducted on the project site in accordance with the protocols described in CDFW's March 7, 2012, [Staff Report on Burrowing Owl Mitigation](#) established by the California Department of Fish and Wildlife prior to the issuance of any construction related permits. Burrowing owl protocol surveys shall be conducted by a qualified biologist on the Project site and within 100 feet (minimum) of the Project site where there is suitable habitat. In California, the burrowing owl breeding season extends from February 1 to August 31 with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct four survey visits: 1) at least one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15. If burrowing owls are identified, the applicant shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project Applicant shall contact CDFW to develop appropriate mitigation/management procedures. The Project Applicant shall submit a final Burrowing Owl Mitigation Plan to the City prior to the City issuing construction permits.

Nesting Birds. The MND proposes Mitigation Measure 2 to serve as mitigation for nesting birds; however, the mitigation measure as proposed may be inadequate to reduce the Project impact on nesting birds to less than significant. CDFW recommends the City revise Mitigation Measure 2 by

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incorporating the underlined language and removing the language with strikethrough:

If Project activities occurs between January 1 through September 15, a nesting bird and raptor survey shall be conducted within a 500-foot radius of the construction site, prior to ground disturbing activities (e.g., staging, mobilizing, grading, vegetation removal) within the Project site. A-The nesting bird and raptor survey shall be conducted by a qualified biologist no more than 7 days within 30 days prior to the start of construction/ground disturbing activities during the appropriate nesting times. If active bird nests are identified during the survey, the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. If Project activities are delayed or suspended for more than 7 days during the breeding season, the nesting bird and raptor survey shall be repeated. At a minimum, impacts to nesting birds or raptors will be avoided by delay of work and/or establishing a minimum no-disturbance buffer of 300 feet for passerines, 500 feet for raptors, and 0.5 mile for special status species (e.g., CESA listed), if feasible. Personnel working on the Project, including all contractors working on site, shall be instructed on the presence of nesting birds, restricted areas, and adherence to no-disturbance buffers. The buffer shall remain in place until young have fledged or a nest becomes inactive as determined by a qualified biologist. buffer of 500 feet around active raptor nests and 50 feet around of migratory bird species.

Landscaping. 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 2023). 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.

Data. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database (i.e., California Natural Diversity Database) which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Information on special status species should be submitted to the CNDDDB by completing and submitting [CNDDDB Field Survey Forms](#) (CDFW 2023b). Information on special status native plant populations and sensitive natural communities, the [Combined Rapid Assessment and Relevé Form](#) should be completed and submitted to CDFW's Vegetation Classification and Mapping Program (CDFW 2023c).

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


Filing Fees

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

Conclusion

We appreciate the opportunity to comment on the Project to assist the City in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines, § 15073(e)]. If you have any questions or comments regarding this letter, please contact Julisa Portugal, Environmental Scientist, at Julisa.Portugal@wildlife.ca.gov or (562) 330 - 7563.

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager
South Coast Region

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ec: CDFW

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References:

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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- Mohave Ground Squirrel Surveys	<p>The City shall require the Project Applicant to retain a qualified biologist familiar with the species' behavior and life history to conduct focused surveys for Mohave ground squirrel throughout the Project site. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines. If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall secure an Incidental Take Permit (ITP) for Mohave ground squirrel before ground-disturbing activities commence. The ITP shall specify avoidance, minimization, and mitigation conditions for temporary and/or permanent impacts to Mohave ground squirrel including habitat acquisition at a CDFW approved location and mitigation ratio.</p> <p>If a survey conducted according to CDFW guidelines results in no capture or observation of Mohave ground squirrel on a Project site, this is not necessarily evidence that the Mohave ground squirrel does not exist on the</p>	<p>Prior to ground-disturbing activities or vegetation removal</p>	<p>City/ Project Applicant/ Qualified Biologist</p>



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	<p>site or that the site is not actual or potential habitat of the species. However, in the circumstance of such a negative result, CDFW may stipulate that the Project site harbors no Mohave ground squirrel. This stipulation shall expire one year from the end date of the last trapping on the Project site conducted according to these guidelines. However, if Mohave ground squirrel or other listed species are discovered on the Project site, avoiding take of a listed species and or securing authorization for incidental take of a listed species pursuant to Fish and Game Code Section 2081 (b) <i>et seq.</i> remains the responsibility of the Project Applicant.</p>		
<p>MM-BIO-2- Incidental Take Permit</p>	<p>The Project Applicant may choose to forgo focused Mohave ground squirrel presence/absence surveys and assume presence of Mohave ground squirrel on site. Under this option, an ITP shall be obtained for Mohave ground squirrel prior to ground/vegetation disturbance activities. The Project shall mitigate for temporary and/or permanent impacts to Mohave ground squirrel habitat as specified in conditions of the ITP through habitat acquisition at a CDFW-approved location and mitigation ratio.</p>	<p>Prior to ground-disturbing activities or vegetation removal</p>	<p>Project Applicant</p>
<p>MM-BIO-3- Mountain Plover Surveys</p>	<p>The City shall require the Project Applicant to retain a qualified biologist to conduct a focused survey for mountain plover. Within one year prior to vegetation removal and/or grading, a qualified biologist familiar with the species' behavior and life history shall conduct surveys to determine the presence/absence of</p>	<p>Prior to ground-disturbing activities or vegetation removal</p>	<p>City/ Project Applicant/ Qualified Biologist</p>



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	<p>mountain plover. Surveys shall be conducted throughout the entire Project site and adjacent land to ensure no missed detection of mountain plover. Surveys shall also be conducted during the appropriate season (September - March) when the species is in California and utilizing wintering grounds.</p>		
<p>MM-BIO-4- Biological Monitor</p>	<p>The City shall require the Project Applicant to have a qualified biologist on site to move out of harm's way wildlife that would be injured or killed during ground-disturbing activities. 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. If presence of mountain plover is found on the Project site during the winter season, Project activities shall be halted until the species have departed from the site. 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 2 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.</p>	<p>During ground-disturbing activities or vegetation removal</p>	<p>City / Project Applicant/ Qualified Biologist</p>
<p>MM-BIO-5- Injured or Dead Wildlife</p>	<p>If any SSC are harmed 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 3 calendar days of the incident or finding. The report shall include the date, time of the finding or</p>	<p>During ground-disturbing activities or vegetation removal</p>	<p>Qualified Biologist</p>



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	<p>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 shall only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.</p>		
<p>MM-BIO-6-Mitigation Measure 3</p>	<p>A preconstruction burrowing owl survey shall be conducted on the project site in accordance with the protocols described in CDFW's March 7, 2012, Staff Report on Burrowing Owl Mitigation prior to the issuance of any construction related permits. Burrowing owl protocol surveys shall be conducted by a qualified biologist on the Project site and within 100 feet (minimum) of the Project site where there is suitable habitat. In California, the burrowing owl breeding season extends from February 1 to August 31 with some variances by geographic location and climatic conditions. Survey protocol for breeding season owl surveys states to conduct four survey visits: 1) at least one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15. If burrowing owls are identified, the applicant shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project Applicant shall contact CDFW to develop appropriate mitigation/management procedures. The Project Applicant shall submit a final Burrowing Owl</p>	<p>Prior to issuing City permits</p>	<p>Project Applicant/ Qualified Biologist</p>



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	Mitigation Plan to the City prior to the City issuing construction permits.		
MM-BIO-7- Mitigation Measure 2	If Project activities occurs between January 1 through September 15, a nesting bird and raptor survey shall be conducted within a 500-foot radius of the construction site, prior to ground disturbing activities (e.g., staging, mobilizing, grading, vegetation removal) within the Project site. The nesting bird and raptor survey shall be conducted by a qualified biologist no more than 7 days prior to the start of construction/ground disturbing activities during the appropriate nesting times. If Project activities are delayed or suspended for more than 7 days during the breeding season, the nesting bird and raptor survey shall be repeated. At a minimum, impacts to nesting birds or raptors will be avoided by delay of work and/or establishing a minimum no-disturbance buffer of 300 feet for passerines, 500 feet for raptors, and 0.5 mile for special status species (e.g., CESA listed), if feasible. Personnel working on the Project, including all contractors working on site, shall be instructed on the presence of nesting birds, restricted areas, and adherence to no-disturbance buffers. The buffer shall remain in place until young have fledged or a nest becomes inactive as determined by a qualified biologist.	Prior to and during ground-disturbing activities or vegetation removal	Qualified Biologist
REC – 1- MND Revision	The MND should discuss the presence of mountain plover on a local and regional scale. The MND should include a discussion describing the Project's potential	Prior to finalizing the	City



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<p>(Mountain Plover)</p>	<p>impact on mountain plover, its wintering habitat within and adjacent to the site, and the Project's potential contribution to the ongoing loss of wintering habitat.</p>	<p>CEQA document</p>	
<p>REC - 2 - MND Revisions (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 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 and/or conserve; 5) Why the Biological Impact Fee is appropriate for mitigating cumulative loss of biological resources in the Antelope Valley; 6) How is the Biological Impact Fee 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 	<p>Prior to finalizing the CEQA document</p>	<p>City</p>



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	<p>Impact Fee would offset Project impacts on biological resources in the Antelope Valley;</p> <p>8) When would the City 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;</p> <p>9) How the City would commit the Project Applicant to paying the Biological Impact Fee. For example, when would the City require payment from the Project Applicant, how long would the Project Applicant have to pay the Biological Impact Fee, and what mechanisms would the City implement to ensure the Biological Impact Fee is paid? Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines, § 15126.4).</p> <p>10) What performance measures the proposed mitigation would achieve (CEQA Guidelines, § 15126.4);</p> <p>11) What type(s) of potential action(s) that can feasibly achieve those performance standards (CEQA Guidelines, § 15126.4); and,</p> <p>12) How the Biological Impact Fee would be adequate such that no impacts would occur as a result of the Project.</p>		
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<p>REC- 3 – Mitigation Commitment</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 use 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 finalizing the CEQA document</p>	<p>City</p>
<p>REC – 4- Landscaping</p>	<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 listed as ‘Moderate’ or ‘High’ by the California Invasive Plant Council. 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>	<p>Prior to finalizing the CEQA document or Project activities</p>	<p>City/Project Applicant</p>
<p>REC- 5 - Data</p>	<p>CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database (i.e., California Natural Diversity Database) which may be used to make subsequent or supplemental environmental determinations. Information on special status species should be submitted to the CNDDDB by completing and submitting CNDDDB Field Survey Forms. Information on special status native plant populations</p>	<p>Prior to ground-disturbing activities or vegetation removal</p>	<p>Biologist</p>



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	and sensitive natural communities, the Combined Rapid Assessment and Relevé Form should be completed and submitted to CDFW's Vegetation Classification and Mapping Program.		
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