



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

South Coast Region
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wildlife.ca.gov

September 14, 2023

Governor's Office of Planning & Research

Sep 14 2023

STATE CLEARINGHOUSE

Jocelyn Swain
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**Subject: Tentative Tract Map No. 62478, Mitigated Negative Declaration,
SCH #2023080644, City of Lancaster, Los Angeles County**

Dear Jocelyn 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. 62478 (Project). The Project applicant for the Project is Rodeo Credit Enterprises, LLC. 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 the subdivision of 19.81 acres into 74 single-family detached homes. The residential lots would range in size from 7,020 square feet to 15,023 square feet. Access to the subdivision would be publicly available from 35th Street East, Jackman Avenue, and Avenue I. Streets within the subdivision would be private. Additionally, sidewalks and publicly maintained landscaping would be installed around the subdivision in addition to development of a block wall surrounding the subdivision.

Location: The 19.81-acre Project site is located at the southeast corner of Avenue I and 35th Street East in the City of Lancaster, Los Angeles County. The Project site is bound by East Avenue I to the north, 40th Street East to the east, 35th Street East to the west, and East Lancaster Boulevard to the south. The Assessor's Parcel Numbers associated with the Project site is 3150-003-001 and 3150-003-002.

Comments and Recommendations

CDFW offers the 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. 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).

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Specific Comments

Comment #1: Impacts on Mohave ground squirrel (*Xerospermophilus mohavensis*)

Issue: The proposed Project may impact Mohave ground squirrel, a threatened CESA-listed species.

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 historically documented to occur throughout 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 east, west, and south by undeveloped land which may support local movement of small wildlife, such as Mohave ground squirrel. Additionally, the Project site provides low to medium habitat for Mohave ground squirrel based on CDFW's [Mohave Ground Squirrel Predicted Habitat – CWHR M073 Dataset](#) (CDFW 2023b). Moreover, the biological resources assessment (BRA) noted that Mojave ground squirrel were not observed during the field survey. Although no presence of Mohave ground squirrel was recorded, the field survey was conducted in June, which is considered outside of the recommended survey period for the species. The appropriate period for visual surveys of Mohave ground squirrel is between March 15 through April 15 (CDFW 2003). Given the Project's location, potential to provide habitat, and out of season field survey, Mohave ground squirrel may have been undetected and may currently utilize the Project site. Without focused protocol surveys during the appropriate survey period, Project activities may adversely impact Mohave ground squirrel. The MND should propose avoidance and minimization measures to reduce Project impacts to Mohave ground squirrel. Project activities proceeding based on a false negative and with no avoidance measures could result in potential injury or mortality of this species and contribute to permanent loss of habitat. Furthermore, the MND does not provide compensatory mitigation to offset the loss of supporting habitat for Mohave ground squirrel.

Evidence impacts would be significant: The Mohave ground squirrel has a restricted geographic range in the western Mojave Desert, where it has suffered

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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. 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 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 Desert tortoise (*Gopherus agassizii*)

Issue: The Project may impact desert tortoise, a threatened CESA- and ESA-listed species.

Specific impacts: Project ground-disturbing activities such as grading, construction activities, and vegetation removal will result in habitat destruction and may result in loss of burrowing habitat, foraging habitat, and cause the death or injury of adults, juveniles, eggs, or hatchlings mortality.

Why impacts would occur: The MND states that, “[T]he site does not contain habitat to support either desert tortoise or Mohave ground squirrel. Therefore, no impacts would occur to these species” (page 20). The MND does not provide further discussion as to what characteristics of the Project site make it unsuitable for desert tortoise. Moreover, the BRA does not mention desert tortoise or provide context as to why the Project site is unsuitable for this species. Conclusions related to the presence of Mohave ground squirrel on site, should be derived by sound evidence based on scientific literature data, and/or maps. Conclusions based solely on one field survey is not sufficient to capture all wildlife and plant species that inhabit a Project site.

According to the United States Fish and Wildlife Service (USFWS), habitat characteristics for desert tortoise include a variety of habitats that consist of sandy flats, washes, rocky foothills, and arid land with sparse vegetation. The Project site is located in an arid area that contains sparse native vegetation. The Project site also lies within the current range of desert tortoise based on the USFWS geographic range map for desert tortoise (USFWS 2023). Although no desert tortoises were observed during the June field survey, the timing of the survey is outside of the appropriate survey period for desert tortoise. Surveys to detect desert tortoise should be conducted when this species is most active from April to May and September to October. It is probable that desert tortoise may have been undetected during the field survey. Given its home range and potential false negative survey result, it is possible for desert tortoise to utilize the

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Project site and potentially be impacted during Project activities. The MND should include focused surveys for desert tortoise to ensure that Project activities will not adversely impact desert tortoise and supporting habitat. If desert tortoise utilize the Project site, Project activities may result in direct mortality and/or injury, loss of habitat, increased human presence, increased disturbance (e.g., elevated noise), and reduced reproductive success. Loss of habitat on the Project site would also contribute to the rapid cumulative loss of desert tortoise habitat on a local and regional scale. Additionally, the MND should incorporate a mitigation measure that outlines replacement of desert tortoise habitat.

Evidence impacts would be significant: Desert tortoise has full protection of a threatened species under CESA. Take of any endangered, threatened, candidate species, or CESA-listed plant species that results from a project is prohibited, except as authorized by State law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Desert tortoise meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). 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 #3: Desert Tortoise Surveys – The Project applicant shall retain a qualified biologist to prepare a habitat assessment and conduct 10-meter-wide belt transects covering the Project site and adjacent areas in order to determine the presence of desert tortoise. The habitat assessment and transects shall be performed adhering to methods described in [Preparing for Any Action That May Occur Within the Range of the Mojave Desert Tortoise](#) (USFWS 2019). Findings from the surveys shall be provided in the MND for public disclosure and review.

Mitigation Measure #4: Compensatory Mitigation – If the Project would impact desert tortoise and habitat, the MND shall provide measures to avoid and/or mitigate potential impacts to desert tortoise as well as habitat. For unavoidable impacts, the Project applicant shall consult with CDFW and USFWS, and obtain appropriate take authorization under CESA and federal Endangered Species Act (ESA) prior to implementing the Project.

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Comment #3: Impacts on Mountain Plover (*Charadrius montanus*)

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, 2012 and 2011 observations of mountain plover have been recorded within three miles of the Project site. Similar to desert tortoise and Mohave ground squirrel, the MND and BRA state that habitat on site is not suitable for mountain plover without providing further explanation. Although mountain plover was not detected on the Project site during the field survey, the survey was conducted in June, which is outside the appropriate survey period (September to mid-March) to observe wintering mountain plover. Furthermore, a separate biological resources report (BRR) was drafted for Tentative Tract Map No. 83572 Project, directly abutting the southern portion of the Project site. The BRR for Tentative Tract Map No. 83572 stated that small flocks of plovers may use resources on the subject property and adjacent land as an alternative, if suboptimal, wintering ground (Yorke 2021). The MND should re-assess the Project's impact on mountain plover and its wintering habitat, provide a discussion in the MND, and provide appropriate measures to avoid or minimize the impacts.

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;

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- 4) if the species 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
- 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 2023c).

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):

Mitigation Measure #5: Mountain Plover Surveys – The Project Applicant shall 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 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.

Mitigation Measure #6: Biological Monitor – The Project Applicant shall retain 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.

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Mitigation Measure #7: 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 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 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 \$770/acre fee (Biological Impact Fee) for offsetting cumulative loss of biological resources in the Antelope Valley.

Specific impacts: Development of approximately 20 acres on the Project site may result in permanent loss of habitat that may support burrowing owls, Mohave ground squirrel, desert tortoise, mountain plover, and other wildlife.

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 21 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;

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- 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 \$770/acre 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);
- 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 does not 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)].

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Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #1: CDFW recommends the City revise the MND to provide adequate, complete, and good-faith disclosure of information that would address the twelve points addressed above.

Recommendation #2: The MND should provide specific performance standards that meet the criteria for use of the Biological Impact Fee, as well as a discussion of how the performance standards will be met, in the Project Description and Biological Resources sections of the MND.

Additional Recommendations

Burrowing Owls. CDFW recommends the City revise Mitigation Measure 3 by incorporating the underlined language and removing the language with strikethrough:

A pre-construction burrowing owl clearance survey shall be conducted no more than 14 ~~30~~ days prior to any Project activities ~~vegetation removal or ground disturbing activities~~ to avoid impacts to burrowing owls and/or occupied burrows. The pre-construction clearance survey shall be conducted by a qualified biologist and in accordance with the methods outlined in the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game 2012). Documentation of surveys and findings shall be submitted to the City of Lancaster for review and file. If no burrowing owls or occupied burrows are detected, project activities may begin, and no additional avoidance and minimization measures shall be required.

If an occupied burrow is found outside, but within 500 feet, of the development footprint, the qualified biologist shall establish a "no-disturbance" buffer around the burrow location(s). The size of the "no-disturbance" buffer shall be determined in consultation with CDFW ~~and be based on the species status (i.e., breeding, non-breeding) and proposed level of disturbance.~~ If burrowing owls are an occupied burrow is found within the development footprint, ~~and cannot be avoided,~~ the Project 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 issuance of appropriate permits. ~~burrowing owl exclusion and mitigation plan shall be prepared and submitted to CDFW for approval prior to initiating project activities.~~

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Nesting Birds. CDFW recommends the City revise Mitigation Measure 2 by 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 Project site. A The nesting bird and raptor survey shall be conducted by a qualified biologist within no more than 7 days ~~14 days~~ prior to the start of any construction/ground disturbing activities. 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. The qualified biologist shall survey all suitable nesting habitat within the project impact area, and areas within a biologically defensible buffer zone surrounding the project impact area. If no active bird nests are detected during the nesting bird and raptor clearance survey, project activities may begin, and no additional avoidance and minimization measures shall be required. If an active bird nest is found, the species shall be identified, and a “no disturbance” buffer shall be established around the active nest by a qualified biologist. The size of the “no disturbance” buffer shall be increased or decreased based on the judgement of the qualified biologist and level of activity and sensitivity of the species. At a minimum, the buffer shall be at least 500 feet around active raptor nests, and 300 ~~50~~ feet around nests of passerine migratory bird species, 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 qualified biologist shall periodically monitor any active bird nests to determine if project-related activities occurring outside the “no-disturbance” buffer disturb the birds and if the buffer shall be increased. Once the young have fledged and left the nest, or the nest otherwise becomes inactive under natural conditions, project activities within the “no-disturbance” buffer may occur following an additional survey by the qualified biologist to search for any new bird nests in the restricted area.

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 2023d). Information on special status native plant populations and sensitive natural communities, the [Combined Rapid Assessment and Relevé Form](#) should be

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completed and submitted to CDFW's Vegetation Classification and Mapping Program (CDFW 2023e).

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.

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Sincerely,

DocuSigned by:

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Jennifer Turner, for
David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW
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OPR
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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 Survey	<p>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. 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.</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 site or that the site is not actual or potential habitat of the species. However, in the circumstance of such a</p>	Prior to Project activities	Project Applicant/ Qualified Biologist

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	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) <i>et seq.</i> remains the responsibility of the Project applicant.		
MM- BIO-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 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.	Prior to Project activities	Project Applicant
MM-BIO-3- Desert Tortoise Surveys	The Project applicant shall retain a qualified biologist to prepare a habitat assessment and conduct 10-meter-wide belt transects covering the Project site and adjacent areas in order to determine the presence of desert tortoise. The habitat assessment and transects shall be performed adhering to methods described in Preparing for Any Action That May Occur Within the Range of the Mojave Desert Tortoise. Findings from the surveys shall be provided in the MND for public disclosure and review.	Prior to and during Project activities	Project Applicant/ Qualified biologist

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MM-BIO-4- Compensatory Mitigation	If the Project would impact desert tortoise and habitat, the MND shall provide measures to avoid and/or mitigate potential impacts to desert tortoise as well as habitat. For unavoidable impacts, the Project applicant shall consult with CDFW and USFWS, and obtain appropriate take authorization under CESA and federal Endangered Species Act (ESA) prior to implementing the Project.	Prior to Project activities	Project Applicant
MM-BIO-5- Mountain Plover Surveys	The Project Applicant shall 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 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.	Prior to and during Project activities	Project Applicant/ Qualified biologist
MM-BIO-6- Biological Monitor	The Project Applicant shall retain 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	Prior to and during Project activities	Project Applicant/ Qualified biologist

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	<p>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>MM-BIO-7- 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 incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.</p>	<p>Prior to and during Project activities</p>	<p>Project Applicant/ Qualified biologist</p>
<p>MM-BIO-8- Mitigation Measure 3</p>	<p>A pre-construction burrowing owl clearance survey shall be conducted no more than 14 days prior to any Project activities to avoid impacts to burrowing owls and/or occupied burrows. The pre-construction clearance survey shall be conducted by a qualified biologist and in accordance with the methods outlined in the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game 2012). Documentation of surveys and findings shall be submitted to the City of Lancaster for review and file. If no burrowing owls or occupied burrows are detected, project activities may begin, and no additional</p>	<p>Prior to and during Project activities</p>	<p>Project Applicant/ Qualified biologist</p>

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	<p>avoidance and minimization measures shall be required.</p> <p>If an occupied burrow is found outside, but within 500 feet, of the development footprint, the qualified biologist shall establish a “no-disturbance” buffer around the burrow location(s). The size of the “no-disturbance” buffer shall be determined in consultation with CDFW. If burrowing owls are found within the development footprint, the Project 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 issuance of appropriate permits.</p>		
<p>MM-BIO-9-Mitigation Measure 2</p>	<p>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 Project site. The nesting bird and raptor survey shall be conducted by a qualified biologist within no more than 7 days prior to the start of any construction/ground disturbing activities. 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. If no active bird nests are detected during the nesting bird and raptor survey, project activities may begin, and no additional avoidance and minimization measures shall be required. If an active bird nest is found, the species shall be identified, and a “no disturbance” buffer shall</p>	<p>Prior to and during Project activities</p>	<p>Project Applicant/ Qualified biologist</p>

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	<p>be established around the active nest by a qualified biologist. The size of the “no disturbance” buffer shall be increased or decreased based on the judgement of the qualified biologist and level of activity and sensitivity of the species. At a minimum, the buffer shall be at least 500 feet around active raptor nests, 300 feet around nests of passerine species, 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 qualified biologist shall periodically monitor any active bird nests to determine if project-related activities occurring outside the “no-disturbance” buffer disturb the birds and if the buffer shall be increased. Once the young have fledged and left the nest, project activities within the “no-disturbance” buffer may occur following an additional survey by the qualified biologist to search for any new bird nests in the restricted area.</p>		
REC-1- MND Revisions (Biological Impact Fee)	<p>CDFW recommends the City revise the MND to provide adequate, complete, and good-faith disclosure of information that would address the twelve points addressed above.</p>	<p>Prior to final CEQA Document</p>	<p>City</p>
REC-2- Mitigation Commitment	<p>The MND should provide specific performance standards that meet the criteria for use of the Biological Impact Fee, as well as a discussion of how the performance standards will be met, in the Project Description and Biological Resources sections of the MND.</p>	<p>Prior to final CEQA Document</p>	<p>City</p>

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REC-3-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. 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 and sensitive natural communities, the Combined Rapid Assessment and Relevé Form should be completed and submitted to CDFW's Vegetation Classification and Mapping Program.	Prior to Project activities	Qualified Biologist
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