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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



January 3, 2024

Governor's Office of Planning & Research

**Jan 04 2024**

**STATE CLEARINGHOUSE**

Jocelyn Swain  
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Lancaster, CA 93534  
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**SUBJECT: SITE PLAN REVIEW NO. 22-015 (PROJECT) MITIGATED NEGATIVE DECLARATION (MND) SCH# 2023120026**

Dear Jocelyn Swain,

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Lancaster (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW's Role**

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish & G. Code, §§ 711.7, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect State fish and wildlife resources.

CDFW 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

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 *et seq.* The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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& 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 Summary**

**Proponent:** Ed Fagenson

**Objective:** The Project proposes the development and operation of a recreational vehicle (RV) and mini-storage facility on 10 acres. The facility would consist of two buildings to provide 67 indoor RV storage units and 246 mini-storage units. Additionally, 220 outdoor RV parking spaces would be designated in the central portion of the Project site. A wash rack and dump station for RVs would also be installed onsite. In the northern end of the Project site, a detention basin would be constructed to control drainage and runoff. The entire Project site would be fenced, and access to the Project site would be provided from a driveway along Avenue H. Prior to construction activities, the entire Project site would be cleared and regraded.

**Location:** The 10-acre Project site is located on the north side of Avenue H in the City of Lancaster, California. The Project site is bound by West Avenue H to the south, 20<sup>th</sup> Street West to the west, 15<sup>th</sup> Street West to the east, and vacant land to the north. The Assessor's Parcel Number associated with the Project site is 3118-006-024.

**Biological Setting:** The Project site lies within the central portion of the City and is currently vacant and undeveloped. Surrounding land uses include vacant land to the north, east, and west, and single-family residences to the south. Signs of human disturbance, litter, debris, and off-road activity are exhibited throughout the entire Project site. The Project site is located within the Amargosa Creek drainage.

A field survey of the Project site was conducted on July 28, 2022, with findings compiled in a Biological Resources Assessment (BRA). The Project site is characteristic of a disturbed California juniper (*Juniperus californica*) and shadscale-mormon tea (*Atriplex confertifolia-Ephedra nevadensis*) scrub habitat with clay pan and dune topography. A total of 27 non-native and native plant species were observed during the survey. Although no special-status plant species were observed, suitable habitat for alkali mariposa lily (*Calochortus striatus*; California Rare Plant Rank (CRPR) 1B.2) is present within the Project site. Additionally, ephemeral drainages and connecting clay pans occur throughout the Project site. Wildlife species observed during the field survey include, but are not limited to, desert cottontail (*Sylvilagus audubonii*), California ground squirrel (*Otospermophilus beecheyi*), black-tailed jackrabbit (*Lepus californicus*), and common raven (*Corvus corax*). No special-status wildlife species were observed during the field survey.

The City provided the BRA for a preconsult review on January 3, 2023, and CDFW submitted comments for the proposed Project on January 18, 2023. Comments addressed potential impacts on Swainson's hawk (*Buteo swainsoni*; CESA-listed threatened species), burrowing owl (*Athene cunicularia*; California Species of Special Concern (SSC)), alkali mariposa lily, ephemeral drainages, and nesting birds. Upon review of the MND, CDFW

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remains concerned that the Project will have adverse impacts on alkali mariposa lily, Swainson's hawk, and burrowing owl.

## Comments and Recommendations

CDFW offers additional comments and recommendations below to assist the City in adequately identifying the Project's significant, or potentially significant, direct, and indirect impacts on wildlife (i.e., biological, including botanical) 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: Impact on Swainson's Hawk

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

**Specific impacts:** Removal of trees and grading activities may result in loss of suitable nesting and foraging habitat and direct mortality of Swainson's hawk.

**Why impact would occur:** The Antelope Valley Regional Conservation Investment Strategy (AVRCIS) is a guidance document that encourages conservation assessments and planning on a regional scale through identification of focal plant and wildlife species in Antelope Valley, prioritization of conservation needs, and protection of focal species by conservation goals and actions. In the AVRCIS, Swainson's hawk is identified on page 3-40 as a focal species with a high priority conservation level and a conservation goal of 75 percent (DMCA 2021). The MND does not discuss Swainson's hawk on a regional scale, nor does the MND provide an adequate discussion on the Project's impact as it directly relates to Swainson's hawk. Moreover, no avoidance measures are identified in the MND because, "[N]o Swainson's hawk nests have been recorded within five miles of the project site" (page 20). CDFW notes that this is a migratory species and foraging territories have been reported in excess of 18,900 acres (Babcock 1993); therefore, it is very possible that Swainson's hawks forage on the property on a regular or irregular basis, and that the loss of habitat from the Project development results in a significant cumulative impact on the species due to the extensive development occurring and forecasted to continue in Lancaster and the surrounding Antelope Valley.

In addition to the absence of avoidance measures, a protocol-level focused survey was not conducted for Swainson's hawk presence. As discussed in our previous letter, the Project site has several California juniper trees that provide suitable nesting sites for this CESA-listed raptor. Additionally, small mammals, insects, and reptiles that utilize the Project site may serve as prey for the species. The presence of suitable habitat is confirmed by CDFW's [Swainson Hawk Predicted Habitat -CWHR B121 \[ds2092\]](#) dataset, which denotes the Project site as containing medium habitat suitability (CDFW 2016a). Given suitable

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nesting and foraging habitat onsite, CDFW recommends protocol-level focused surveys be conducted to determine the presence of Swainson's hawk. Project activities without pre-construction surveys could result in injury or mortality of unidentified Swainson's hawk. Lastly, Project activities will result in loss of habitat if Swainson's hawk are present and foraging.

**Evidence impacts 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 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 (e.g., which is occurring at a rapid rate in the Antelope Valley), environmental contaminants (e.g., pesticides), and climate change (CDFW 2016b). CDFW considers a Swainson's hawk nest site to be active if it was used at least once within the past five years and impacts to suitable habitat or individual birds within a five-mile radius of an active nest as significant. Based on the foregoing, Project impacts would potentially reduce the number and/or restrict the range of Swainson's hawk or contribute to the abandonment of an active nest and/or the loss of significant foraging habitat for a given nest territory and thus result in "take" as defined under CESA.

#### **Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #1: Swainson's Hawk Survey** – The Project proponent shall retain a qualified biologist to conduct focused surveys adhering to survey protocol outlined in CDFW's [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](#) (CDFW 2010). Findings from the focused surveys shall be submitted to the City prior to Project activities.

**Mitigation Measure #2: Incidental Take Permit (ITP)** – If "take" of Swainson's hawk would occur from Project construction or operation, the Project proponent shall consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & Game Code, § 2080 *et seq.*). The Project proponent shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project proponent shall also provide a copy of a fully executed take authorization prior to the issuance of a grading permit and before any ground disturbance and vegetation removal. 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.

**Recommendation #1:** CDFW recommends that the MND thoroughly analyze and discuss the Project's impact on the Swainson's hawk and its supporting habitat within and adjacent to the Project site. The MND should include a discussion of this species and its population status on a local and regional scale. Mitigation measures specific to Swainson's hawk should be incorporated into the MND and should consider the conservation goals and

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actions outlined in the AVRCIS.

## **Comment #2: Impact on Rare Plants**

**Issue:** The Project may impact alkali mariposa lily.

**Specific impacts:** Vegetation clearing and grading of the Project site may result in loss of suitable habitat, loss of population, and direct mortality of alkali mariposa lily. Project activities may also result in the seedbank being buried, crushed, or trampled on.

**Why impact would occur:** According to AVRCIS, alkali mariposa lily is designated as a focal species of special interest with limited distribution in the AVRCIS area. As a focal species with limited distribution, alkali mariposa lily is given the highest level of conservation priority with a conservation goal of 90 percent. Additionally, the BRA concluded that there is a high potential for alkali mariposa lily to be present on the Project site due to the presence of suitable habitat (i.e., ephemeral drainages, clay pans, shadscale scrub). Although no observations of this species were observed during the field survey, the field survey was conducted approximately a month prior to the blooming period. To offset any potential Project-related impacts toward this rare plant, the MND proposes Mitigation Measure 2. Mitigation Measure 2 requires the Project proponent to perform a spring-time rare plant survey before issuance of any construction related permits; however, there is an option to not perform spring-time surveys and instead map areas containing suitable habitat and pay \$2,405/acre for these areas. Botanical field surveys are necessary to provide information on the Project's potential impacts on rare, sensitive, and special status plants. Project construction and activities proceeding based on absent surveys may result in the Project having an adverse impact on undetected rare plants.

Furthermore, Mitigation Measure 2 does not entirely align with actions listed in the AVRCIS. As a species with the highest conservation priority level, the AVRCIS calls for permanent protection of habitat with high conservation value for this species through land acquisition, recordation of a protection instrument (i.e., conservation easement), and implementation of adequate management activities to sustain an alkali mariposa lily population in perpetuity. CDFW supports the AVRCIS's specific measures to adequately offset impacts to alkali mariposa lily and is concerned that a blanket fee of \$2,405/acre would not sufficiently cover all costs associated with land acquisition and management of mitigation lands, or that mitigation lands will be obtained in an optimal location to conserve the target species. CDFW recommends that the MND incorporate a mitigation measure that outlines replacement of alkali mariposa lily habitat that is permanently protected by a conservation easement, managed by a qualified land management entity, and funded by an endowment that will ensure adaptive management of the mitigation lands in-perpetuity.

**Evidence impacts would be significant:** Impacts on rare flora could be considered a significant effect on the environment. Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most of the plants that are ranked 1B have declined significantly over the last century. The additional threat rank of 0.1 indicates a species with over 80 percent of its occurrences threatened in California.

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The additional threat rank of 0.2 indicates a species with 20 to 80 percent of its occurrences threatened (CNPS 2023). Impacts to CRPR 1B plant species and their habitat meet the definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Some CRPR 3 and 4 species meet the definitions of endangered, rare, or threatened under CEQA. Impacts to CRPR 1B plant species and their habitat may result in a mandatory finding of significance because the Project would have the potential to threaten to eliminate a plant community and substantially reduce the number or restrict the range of an endangered, rare, or threatened species (CEQA Guidelines, § 15065). Insufficient mitigation may result in unmitigated temporal or permanent impacts to a rare plant species. Subsequently, the Project would continue 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: Mitigation Measure– 2** - CDFW recommends the City revise Mitigation Measure 2 by incorporating the underlined language and removing the language with strikethrough:

“Prior to the issuance of any construction related permits, the ~~Project proponent~~ applicant shall retain a qualified biologist to conduct a ~~springtime~~ sensitive plant survey specifically focused on alkali mariposa lilies within the Project site and adjacent areas. Surveys shall be conducted according to 'DFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). Surveys shall also be conducted at the appropriate blooming period for optimal detection. The Project proponent shall submit a survey report, including negative findings, to the City and CDFW. At a minimum, the survey report shall provide the following information:

- 1) A description and map of the survey area;
- 2) Field survey conditions that shall include name(s) of qualified botanists(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals; and complete list of plant species present;
- 3) If rare plants are found, a map(s) showing the location of individual plants or populations, and number of plants or density of plants per square feet occurring at each location. The map should distinguish between species found and which plants/populations will be avoided versus impacted by Project construction, as well as identify any other activities that would require mitigation;
- 4) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each rare plant or population is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species); and,
- 5) If rare plants are found, species-specific measures to mitigate impacts to rare plants and habitat.



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~~In the event that a springtime survey cannot be conducted, the biologist shall map all habitat suitable for this special status plant species. The biologist's report shall include the total acreage of each special status species present or the suitable habitat for these species and the applicant shall be required to pay \$2,405/acre for these areas. The funds shall be placed into a designated account and utilized for the acquisition of conservation habitat within the Antelope Valley."~~

**Mitigation Measure #4: Compensatory Mitigation** - If alkali mariposa lily is present, the Project proponent shall provide compensatory mitigation at no less than 2:1. The abundance of rare plant species and total habitat acreage within the mitigation lands shall be no less than 2:1. Mitigation lands shall be in the same watershed as the Project site and in an area identified in the Antelope Valley Regional Conservation Investment Strategy to provide high conservation value for the species. The Project proponent shall protect replacement habitat 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. Recordation of the conservation easement shall occur prior to commencement of Project activities. An appropriate endowment shall also be provided for the long-term monitoring and management of mitigation lands.

**Mitigation Measure #5: Habitat Management and Monitoring Plan** – The Project proponent shall retain a certified botanist to draft a Habitat Management and Monitoring Plan (HMMP) and submit it to the City and CDFW for review and approval prior to Project activities. The HMMP shall outline initial and long-term management and maintenance activities that would occur on mitigation lands. The HMMP shall provide measurable goals and success criteria for establishing self-sustaining populations (e.g., percent survival rate, absolute cover). Maintenance activities outlined in the HMMP shall include measures pertaining to control of exotic vegetation, irrigation schedule, and protection from future maintenance activities (i.e., fuel modification).

### **Comment #3: Impacts on Burrowing Owl**

**Issue:** Mitigation Measure 3 may not adequately reduce Project-related impacts on burrowing owl to a level less than significant.

**Specific impacts:** Project ground-disturbing activities (i.e., grading, vegetation removal, and heavy machinery use) would result in loss of burrowing habitat, destruction of burrows, and may cause the death or injury of burrowing owl.

**Why impacts would occur:** Burrowing owl is an SSC with a wide distribution throughout Antelope Valley. Like Swainson's hawk, burrowing owl is also considered a focal species in the AVRCIS with a high priority conservation level and a conservation goal of 75 percent suitable habitat is retained. As discussed in the AVRCIS, suitable habitat for burrowing owl encompasses a variety of landscapes throughout the region, but it is imperative that burrows, typically from small mammals (e.g., California ground squirrel), already exist on the mitigation site to allow burrowing owl to occupy them. During the field survey, California ground squirrel burrows were observed within the Project site and the BRA

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recommended a pre-construction survey. The MND acknowledges the potential presence of burrowing owl during Project activities and provides Mitigation Measure 3 to reduce Project-related impacts; however, the mitigation measure is not species-specific and combines survey protocol for nesting birds and burrowing owls. Although a pre-construction survey for nesting birds and burrowing owl may be conducted on the same day, focused surveys should be conducted for burrowing owl, due to their special status and presence of suitable burrows onsite. Additionally, Mitigation Measure 3 does not provide any mitigation that outlines replacement of suitable burrowing owl habitat. Mitigation Measure 3 should be separated into two mitigation measures that outline separate survey protocols for nesting birds and burrowing owl. An additional mitigation measure should be included in the MND that outlines compensatory mitigation in the event that the Project would result in loss of confirmed burrowing owl habitat.

**Evidence impacts would be significant:** Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86 and prohibited by sections 3503, 3503.5, and 3513. Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Without appropriate take avoidance surveys prior to Project operations including, but not limited to, ground and vegetation disturbing activities and rodent control activities, adverse impacts to burrowing owl may occur because species presence/absence has not been verified. In addition, burrowing owl qualifies for enhanced consideration afforded to species under CEQA, that can be shown to meet the criteria for listing as endangered, rare, or threatened (CEQA Guidelines, § 15380(d)). 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 species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS).

**Recommended Potentially Feasible Mitigation Measure(s):**

**Mitigation Measure #6: Burrowing Owl Surveys** – To reduce impacts to burrowing owl, the Project proponent shall retain a qualified biologist to conduct focused surveys adhering to CDFW’s [Staff Report on Burrowing Owl Mitigation](#) (CDFW 2012). All survey efforts shall be conducted prior to any Project activities that could result in habitat disturbance to soil, vegetation, or other sheltering habitat for burrowing owl. Burrowing owl protocol surveys shall be conducted on the Project site and within 500 feet 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 variations 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 an occupied burrow or burrowing owl is found within the development footprint, the biologist shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project proponent shall contact CDFW to develop appropriate mitigation/management procedures and a final Burrowing Owl Mitigation Plan shall be submitted to the City and CDFW for review and



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approval prior to Project activities.

**Mitigation Measure #7: Burrowing Owl Compensatory Mitigation** - If the Project will impact burrowing owl habitat, the Project proponent shall offset impacts on habitat supporting an SSC at a minimum of 2:1 to ensure no net loss of burrowing owl habitat. The Project proponent shall set aside comparable replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate endowment to provide for the long-term management of mitigation lands.

**Mitigation Measure #8: Mitigation Measure 3** – CDFW recommends the City revise Mitigation Measure 3 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 construction site, prior to ground disturbing activities (e.g., staging, mobilizing, grading, vegetation removal) within the Project site. A The nesting bird and raptor burrowing owl preconstruction surveys shall be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project-related activity during the appropriate nesting times and concentrate on potential roosting or perch sites. 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, within 14 days prior to the start of construction/ground disturbing activities. 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 an active bird nest is found, the species shall be identified, and a “no disturbance” buffer shall be established around the active nest. Impacts to nesting birds will be avoided by delay of work or establishing a At a minimum, the buffer shall be at least of 500 feet around active raptor nests and 100 50 feet around other migratory bird species. Personnel working on the Project, including all contractors working onsite, 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. A The qualified biologist shall periodically monitor any active bird nests to determine if project related activities occurring outside the “no-disturbance” buffer disturbs 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.”

### **Additional Recommendations**

**Environmental 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 2023a). Information on special status native plant

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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 2023b).

**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 for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and 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).

### **Environmental Document Filing Fees**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order 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](mailto:Julisa.Portugal@wildlife.ca.gov) or (562) 330-7563.

Sincerely,

DocuSigned by:  
  
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David Mayer  
Environmental Program Manager  
South Coast Region

ec: **California Department of Fish & Wildlife**

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**References:**

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#### Attachment A:

#### CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations

Recommendation	Mitigation Measures	Timing	Responsible Party
<b>MM-BIO-1 – Swainson’s hawk Survey</b>	The Project proponent shall retain a qualified biologist to conduct focused surveys adhering to survey protocol outlined in CDFW’s 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. Findings from the focused surveys shall be submitted to the City prior to Project activities.	Prior to Project activities	Project proponent/ Qualified Biologist/ City
<b>MM-BIO-2- Incidental Take Permit</b>	If “take” of Swainson’s hawk would occur from Project construction or operation, the Project proponent shall consult with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & Game Code, § 2080 et seq). The Project proponent shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project proponent shall also provide a copy of a fully executed take authorization prior to the issuance of a grading permit and before any ground disturbance	Prior to Project activities	Project proponent

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	<p>and vegetation removal. 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>		
<p><b>MM-BIO-3 – Mitigation Measure 2</b></p>	<p>Prior to the issuance of any construction related permits, the Project proponent shall retain a qualified biologist to conduct a sensitive plant survey, specifically focused on alkali mariposa lilies within the Project site and adjacent areas. Surveys shall be conducted according to CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Surveys shall also be conducted at the appropriate blooming period for optimal detection. The Project proponent shall submit a survey report, including negative findings, to the City and CDFW. At a minimum, the survey report shall provide the following information:</p> <ol style="list-style-type: none"> <li>1) A description and map of the survey area;</li> <li>6) Field survey conditions that shall include name(s) of qualified botanists(s) and brief qualifications; date and time of survey; survey duration; general</li> </ol>	<p>Prior to Project activities</p>	<p>Project proponent/ Qualified Biologist</p>

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	<p>weather conditions; survey goals, and <u>complete list of plant species present</u>;</p> <p>2) If rare plants are found, a map(s) showing the location of individual plants or populations, and number of plants or density of plants per square feet occurring at each location. The map should distinguish between species found and which plants/populations will be avoided versus impacted by Project construction and activities that would require mitigation;</p> <p>3) A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each rare plant or population is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species); and,</p> <p>4) If rare plants are found, species-specific measures to mitigate impacts to rare plants and habitat.</p>		
<p><b>MM-BIO-4 – Compensatory Mitigation</b></p>	<p>If alkali mariposa lily is present, the Project proponent shall provide compensatory mitigation at no less than 2:1. The abundance of a rare plant</p>	<p>Prior to Project activities</p>	<p>Project proponent</p>



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	<p>species and total habitat acreage within the mitigation lands shall be no less than 2:1. Mitigation lands shall be in the same watershed as the Project site and in an area identified in the Antelope Valley Regional Conservation Investment Strategy to provide high conservation value for the species. The Project proponent shall protect replacement habitat 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. Recordation of the conservation easement shall occur prior to commencement of Project activities. An appropriate endowment shall also be provided for the long-term monitoring and management of mitigation lands.</p>		
<p><b>MM-BIO-5 –                  Habitat                  Management and                  Monitoring Plan</b></p>	<p>The Project proponent shall retain a certified botanist to draft a Habitat Management and Monitoring Plan (HMMP) and submit it to the City and CDFW for review and approval prior to Project activities. The HMMP shall outline initial and long-term management and maintenance activities that would occur on mitigation lands. The HMMP shall provide measurable goals and success criteria for establishing self-sustaining populations (e.g., percent survival rate, absolute cover). Maintenance activities outlined in the HMMP shall include measures pertaining to control of exotic vegetation, irrigation</p>	<p>Prior to                  Project                  Activities</p>	<p>Project                  proponent/Botanist</p>

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	<p>schedule, and protection from future maintenance activities (i.e., fuel modification).</p>		
<p><b>MM-BIO-6 – Burrowing Owl Surveys</b></p>	<p>To reduce impacts to burrowing owl, the Project proponent shall retain a qualified biologist to conduct focused surveys adhering to CDFW’s Staff Report on Burrowing Owl Mitigation. All survey efforts shall be conducted prior to any Project activities that could result in habitat disturbance to soil, vegetation, or other sheltering habitat for burrowing owl. Burrowing owl protocol surveys shall be conducted on the Project site and within 500 feet 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 variations 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.</p> <p>If an occupied burrow or burrowing owl is found within the development footprint, the biologist shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with the 2012 Staff Report on Burrowing Owl Mitigation. The Project proponent shall contact CDFW to develop appropriate mitigation and management procedures and a final Burrowing</p>	<p>Project to Project activities</p>	<p>Project proponent/ Biologist</p>

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	Owl Mitigation Plan shall be submitted to the City and CDFW for review and approval prior to Project activities.		
<b>MM-BIO-7 Burrowing Owl Compensatory Mitigation</b>	If the Project will impact confirmed burrowing owl habitat, the Project proponent shall offset impacts on habitat supporting an SSC at a minimum of 2:1 to ensure no net loss of burrowing owl habitat. The Project proponent shall set aside comparable replacement habitat to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate endowment to provide for the long-term management of mitigation lands.	Prior to Project activities	Project proponent
<b>MM-BIO-8 – Mitigation Measure 3</b>	If Project activities occur 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 preconstruction survey shall be conducted by a qualified biologist no more than 7 days prior to the beginning of any Project-related activity during the appropriate nesting times and concentrate on potential roosting or perch sites. 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 an active bird nest is found, the species shall be identified, and a “no disturbance” buffer shall be established around the active	Prior to and during Project activities	Biologist

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	<p>nest. At a minimum, the buffer shall be at least 500 feet around active raptor nests and 100 feet around migratory bird species. Personnel working on the Project, including all contractors working onsite, 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. The qualified biologist shall periodically monitor any active bird nests to determine if project related activities occurring outside the “no-disturbance” buffer disturbs 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.</p>		
<p><b>REC 1 – MND Revision</b></p>	<p>CDFW recommends that the MND thoroughly analyze and discuss the Project’s impact on the Swainson’s hawk and its supporting habitat within and adjacent to the Project site. The MND should include a discussion of this species and its population status on a local and regional scale. Mitigation measures specific to Swainson’s hawk should be incorporated into the MND and should consider the conservation goals and actions outlined in the AVRCIS.</p>	<p>Prior to Adoption of MND</p>	<p>City</p>

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<b>REC-2 – Environmental Data</b>	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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