

Antelope Valley Air Quality Management District

2551 West Avenue H Lancaster, CA 93536

661-723-8070

www.avaqmd.ca.gov

Barbara Lods, Executive Director

In reply, please refer to AV0325/036

March 31, 2025

Jocelyn Swain
City of Lancaster
44933 Fern Avenue
Lancaster, CA 93534

**Project: Conditional Use Permit (CUP) No. 21-001, Tentative Tract Map No. 24-001 (TTM 84317),
General Plan Amendment (GPA) No. 21-001, and Zone Change (ZC) No. 21-001**

To Whom It May Concern:

The Antelope Valley Air Quality Management District (District) has received the request to review **Conditional Use Permit (CUP) No. 21-001, Tentative Tract Map No. 24-001 (TTM 84317), General Plan Amendment (GPA) No. 21-001, and Zone Change (ZC) No. 21-001** requesting to construct a mixed-use development consisting of 181 apartment units in two buildings; a 235-room hotel; 3 retail/restaurants pads; and a club house. This project site is located on approximately 10 acres on the southeast corner of Avenue L & 15th Street West in the City of Lancaster, CA (APNs: 3109-026-032, 3109-026-040, 3109-026-042 and 3109-026-044).

Prior to the start of any grading/construction activity, the District requires the proposed project to comply with the following:

- Rule 302-Construction Excavation Fee
- Dust Control Plan (DCP) with Signage
- Rule 219-Permitting
- CARB Equipment

Grant funding is available for electric vehicle charging stations at public commercial/industrial locations. For more information or to apply, contact the District.

Thank you for the opportunity to review this planning document. If you have any questions/concerns regarding the information presented in this letter please contact me at (661) 723-8070 ext. 23 or blods@avaqmd.ca.gov.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Lods".

Barbara Lods

BJL/SS

Sent via Email

DEPARTMENT OF TRANSPORTATION

DISTRICT 7

100 S. MAIN STREET, MS 16

LOS ANGELES, CA 90012

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*Making Conservation
a California Way of Life*

September 13, 2024

Jocelyn Swain
City of Lancaster
Community Development Dept.
44933 Fern Avenue
Lancaster, CA 93534

RE: Conditional Use Permit No. 23-001
GTS # 07-LA-2024-04609
SCH # 2024080570
Vic. SR 14 PM 65.609

Dear Jocelyn Swain:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above-referenced project. The project proposes to construct a mixed-use development consisting of 181 apartment units in two buildings; a 235-room hotel; 3 retail/restaurant pads; and a club house. The apartment buildings would be 81,348 square feet and 82,580 square feet; the hotel would be 162,352 square feet; and the three retail/restaurant pads would total 12,800 square feet. The apartment units would be a mix of one-and two-bedroom units with outdoor recreational amenities. The site would have a total 799 parking spaces provided in the center of the development and the spaces for the apartments would be primarily in an underground garage. Access to the development would be from two driveways on 15th Street West. As part of the proposed project, a tentative tract map, general plan amendment and zone change have also been requested. The tentative tract map would subdivide the subject property into six parcels. The general plan designation and zoning on the subject property is currently Non-Urban Residential (NU) and RR-2.5 (rural residential, minimum lot size 2.5 acres). The General Plan Amendment and Zone Change would change these designations to Mixed-Use (MU) and Mixed Use – Commercial (MU-C). The City of Lancaster is the Lead Agency under the California Environmental Quality Act (CEQA).

The closest state facility is SR 14. After reviewing the project's documents, Caltrans has the following comments:

Caltrans aims to reach zero traffic-related fatalities and serious injuries by 2050 as there is a direct link between impact speeds and the likelihood of fatality or serious injury. To reach this goal, Caltrans encourages the Lead Agency to improve pedestrian and bicyclist amenities along W. Avenue L and connect to community destinations. The most effective

methods to reduce pedestrian and bicyclist exposure to vehicles are through physical design and geometrics.

These methods include constructing physically separated facilities such as Class IV bikeways, wide sidewalks, curb extensions, pedestrian refuge islands, landscaping, street furniture, reducing overall parking, and narrowing roadways. Additionally, visual indicators like pedestrian and bicyclist warning signage, flashing beacons, crosswalks, signage, and striping should be used alongside physical design improvements to signal to motorists that they should expect and yield to pedestrians and cyclists.

The Vehicle Miles Traveled Impact Fee Mitigation Program states that, “the proposed project shall pay \$150 per VMT that needs to be reduced to mitigate its VMT impacts in accordance with the city’s Vehicle Miles Traveled Impact Fee Mitigation Program approved by the City Council on January 24, 2023.” The criteria for determining significant VMT impacts must promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. After the project is completed, Caltrans recommends that a follow-up study be conducted to ensure the assumptions/projections were accurate, and the mitigation measures are effective. If not, new mitigation measures will need to be implemented.

Due to the proximity of this project’s site to SR 14, Caltrans Right-of-Way Engineering requests that the Lead Agency submit a proposed tract map for review. Additionally, Caltrans will require an Encroachment Permit for work performed within the State Right-of-Way. Caltrans recommends limiting large truck travel and construction traffic to off-peak commute hours. A permit is required for any heavy construction equipment or materials that need oversized transport vehicles on State highways. If construction traffic is expected to cause issues on any State facilities, please submit a construction traffic control plan detailing these issues for Caltrans’ review.

If you have any questions, please feel free to contact Jaden Oloresisimo, the project coordinator, at Jaden.Oloresisimo@dot.ca.gov and refer to GTS # 07-LA-2024-04609.

Sincerely,



Anthony Higgins
Acting LDR/CEQA Branch Chief

cc: State Clearinghouse



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 13, 2024

Jocelyn Swain
City of Lancaster
44933 Fern Avenue
Lancaster, CA 93534
jswain@cityoflanasterca.org

SUBJECT: CONDITIONAL USE PERMIT No. 21-001, MITIGATED NEGATIVE DECLARATION, SCH #2024080570, LOS ANGELES COUNTY, CA

Dear Jocelyn Swain:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) from the City of Lancaster (City; Lead Agency) for Conditional Use Permit No. 21-001 (Project). 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

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Species Act (CESA) (Fish & G. Code, § 2050 et seq.), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, § 1900 et seq.), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Westlanc Partners, LLC

Objective: The Project proposes the construction and operation of a mixed-use development. Full development of the site would consist of a 235-room hotel; two apartment buildings; three concrete pads totaling 12,800 square feet for restaurant/retail use, and a 3,800 square-foot club house associated with the hotel. Both apartment buildings would be constructed along 15th Street West and have a total of 181 units. The hotel would be constructed along the southern boundary of the site. Moreover, the three concrete pads would be constructed either along the front of West Avenue L or the eastern boundary of the site. The club house and pool area would be constructed in the eastern portion of the site. Ingress and egress to the Project site would occur via two driveways located on 15th Street West. In the center of the development, 799 parking spaces would be installed. Parking associated with the apartments and hotel would be provided underground. Landscaping would be installed along the perimeter and throughout the Project site. Street improvements would also occur along West Avenue L and 15th Street West. Additionally, a tentative tract map, general plan amendment, and zone change would need to be approved. The tentative tract map would subdivide the property into six parcels. The general plan designation would change from non-urban residential to mixed use and the zoning would change from rural residential to mixed-use commercial.

Location: The 10-acre Project site is located in the southeast corner of West Avenue L and 15th Street West within the City. The Project site is bound by West Avenue L to the north, Highway 14 to the east, 15th Street West to the west, and West Avenue L4 to the south. The Assessor's Parcel Numbers associated with the Project site include 3109-026-032, 3109-026-040, 3109-025-042, and 3109-026-044.

Biological Setting: The Project site is located in an urbanized area of the City and exhibits signs of human disturbance (e.g., historical grading and trash dumping). General field surveys were conducted on May 4 and 5, 2023, and findings were compiled in a Biological Resources Report (BRR). During the surveys, a Phase I clearance survey was conducted for (*Athene cunicularia*, a California Species of Concern (SSC)). The vegetation on site consist of several species of exotic weeds along the property boundary with native vegetation in the center of the site. Native vegetation includes western Joshua trees (*Yucca brevifolia*; CESA candidate species), four-wing saltbrush (*Atriplex canescens*), and rabbitbrush (*Ericameria nauseosa*). Aside from approximately 28 western Joshua trees, no special-status plant species were observed. No hydrological features were observed on site. There is a concrete lined

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channel along the eastern boundary that is fenced off from the Project site. A total of 16 wildlife species were recorded during the survey; however, the Project site contains suitable habitat to support burrowing owl, northern California legless lizard (*Anniella pulchra*, SSC), and migratory birds and raptors. Mitigation measures to avoid, minimize, and/or mitigate adverse Project impacts to western Joshua trees, migratory birds, and burrowing owl are incorporated into the MND.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately avoiding and/or mitigating the Project's impacts on fish and wildlife (biological) resources. Additional comments or other suggestions may also be included to improve the 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).

Comment #1: Impacts on Burrowing Owl

Issue: Mitigation Measure 4, as currently written, does not provide compensatory mitigation for loss of suitable habitat or effectively avoid impacts toward burrowing owl.

Specific impacts: Project ground-disturbing activities such as vegetation removal will result in habitat loss and may lead to death or injury of individuals. Project construction activities may also disrupt foraging behavior for over-wintering burrowing owl present on site.

Why impact would occur: Urban development in Antelope Valley contributes to the ongoing loss of suitable habitat for burrowing owls and rapid decline of the burrowing owl population size on a regional scale. Due to various factors, including habitat loss and population decline, burrowing owls were recently petitioned to be listed as an endangered or threatened species under CESA by the Center of Biological Diversity (CBD 2024). According to the [California Natural Diversity Database \(CNDDB\)](#), burrowing owl has been historically observed near the Project site (CDFW 2024a). Additionally, California ground squirrel burrows were observed during general surveys, which have been frequently utilized by burrowing owls during the breeding and overwintering season.

The MND acknowledges burrowing owls may be present during Project activities and provides Mitigation Measure 4. Mitigation Measure 4 describes a preconstruction survey will be conducted prior to activities. CDFW concurs that a preconstruction burrowing owl survey should be conducted; however, the mitigation measure does not include specific compensatory mitigation that outlines replacement of suitable burrowing owl habitat. Removal of suitable habitat would result in the Project's contribution to ongoing loss of suitable habitat for this SSC. In addition to no proposed compensatory mitigation, the

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mitigation measure is conditioned that the qualified biologist will provide a plan for CDFW review once it has been determined that avoidance is not possible. Given that burrowing owls are SSC and attempts to avoid the species may disturb or distress individual owls, encroach on active burrows, and cause owls to temporarily flush, coordination with CDFW should occur immediately after burrowing owl presence has been confirmed.

Evidence impact 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.” 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.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: Mitigation Measure 4 – The City shall revise Mitigation Measure 4 to incorporate the underlined language and omit language in strikethrough:

A pre-construction burrowing owl clearance survey shall be conducted no more than ~~30~~ 14 days prior to any 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 (CDFG 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 minimize 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 an occupied burrow is found within the development footprint, the qualified biologist shall prepare an Impact Assessment and Burrowing Owl Mitigation Plan in accordance with CDFW’s Staff Report on Burrowing Owl Mitigation. The Project proponent shall contact CDFW to develop appropriate mitigation and management procedures and a final Burrowing Owl Mitigation Plan shall be submitted to the City and CDFW for review and approval prior to Project activities. ~~and cannot be avoided, a burrowing owl exclusion and mitigation plan shall be prepared and submitted to CDFW for approval prior to initiating project activities.~~

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If burrowing owl presence is confirmed, the Project proponent shall offset impacts by acquiring CDFW-approved mitigation lands for the species. The potential mitigation land shall have the following: 1) have presence of burrowing owl; 2) replace the impacted burrowing owl habitat area at a minimum of 2:1 ratio to ensure no net loss of habitat; and 3) be of equivalent or greater habitat value than that of the Project site. Prior to acquisition of potential mitigation land, the Project proponent shall provide CDFW with the appropriate documentation for property eligibility. Requested documentation may include, but is not limited to, a biological report, preliminary title report, mineral risk assessment report, and Phase I Environmental Site Assessment report. Following CDFW written approval of potential mitigation land, the Project proponent shall protect the land 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, to be determined by CDFW, shall also be provided for the long-term monitoring and management of mitigation lands.

Comment #2: Impacts on Northern California Legless Lizard

Issue: The Project may impact northern California legless lizard.

Specific Impact: Direct impacts to northern California legless lizard could result from Project construction and activities (e.g., equipment staging, mobilization, and grading); ground disturbance; vegetation clearing; and trampling or crushing from construction equipment, vehicles, and foot traffic. Indirect impacts could result from temporary or permanent loss of suitable habitat.

Why impact would occur: Northern California legless lizard occur in sparsely vegetated areas such as desert scrub. The leaf litter underneath the trees and shrubs on site provide suitable habitat for this SSC (California Herps 2024). According to CNDDDB, there are several observations of northern California legless lizard within two miles of the Project site. While there is potential for northern California legless lizard, the MND does not provide a mitigation measure that outlines avoidance and minimization actions to avoid injury or mortality of northern California legless lizard during Project activities. Project ground-disturbing activities such as vegetation removal would result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. Additionally, the MND and BRR does not outline compensatory mitigation if presence of this SSC is confirmed. Given that habitat loss on a local and regional scale is a major cause of population decline for SSC, removal of confirmed SSC habitat would be considered a significant impact and should be mitigated appropriately.

Evidence impact 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:

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- 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 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 (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and,
- 5) if naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or -endangered status (CDFW 2024b).

CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC that can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). The MND does not provide mitigation for potential impacts on SSC. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #2: Pre-Construction Survey – Within 72 hours of Project-related activities, a qualified biologist with the appropriate handling permits shall conduct a survey to determine presence of northern California legless lizard. The qualified biologist shall survey the proposed impact areas and a 50-foot buffer. Surveys shall incorporate appropriate methods to detect these species, including individuals that could be concealed in burrows, beneath leaf litter, or in loose soil prior to any Project activities in areas that have or may have the potential to support these species. If a special-status species is found, the qualified biologist shall contact CDFW, and the species shall be passively ushered out of harm's way to an area that is unaffected by the Project. If the Project requires SCC to be removed, disturbed, or otherwise handled, the qualified biologist shall obtain all appropriate permits and prepare a species-specific list (or plan) of proper handling and passive relocation protocols. The list (or plan) of protocols shall be implemented during Project construction and activities/biological construction monitoring.

Mitigation Measure #3: Compensatory Mitigation - For SSC that have been confirmed and/or are expected to occur within the Project site, the Project proponent shall provide compensatory mitigation for temporary and permanent loss of any habitat supporting SSC. There shall be no net loss of habitat supporting SSC (CEQA Guidelines, § 15370(e)). Compensatory mitigation shall be provided within the Project

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boundary at no less than 2:1. Mitigation shall provide appropriate habitat (depending on the species), refugia, and habitat structures that supports that species (e.g., woody material, rocks, brush piles, pools, burrows). Any proposed mitigation area/plan shall include a discussion on the territory size; nesting, breeding, foraging, and refuge locations; invasive, non-native plant and wildlife species present; food availability; and how all life cycle functions will be mitigated. The replacement habitat shall 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 #4: Injured or Dead Wildlife – If any special status wildlife species are found, harmed during relocation, or a dead or injured animal is found, work in the immediate area shall stop immediately, the designated biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW and the City within 3 calendar days of the incident or finding. The report 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: Impacts on Nesting Birds and Raptors

Issue: The mitigation measure proposed in the MND may not be sufficient to minimize Project impacts on nesting birds and raptors.

Specific Impact: Project activities (i.e., vegetation removal, grading, construction) may result in mortality or injury to individual birds and raptors present within the Project site. Additionally, Project activities during breeding season of nesting birds could result in nest abandonment and/or incidental loss of fertile eggs or nestlings.

Why impact would occur: Various bird species were observed during the general survey. While no nests were present on site, it is likely that during the breeding season nests may be found on the ground, in western Joshua trees, or under small shrubs. The MND provides Mitigation Measure 3, which describes a minimum buffer of 50 feet would be placed around active bird nests. With a buffer of 50 feet, eggs and nestlings may continue to be impacted by noise disturbances, increased human activity, increased lighting, dust, vegetation clearing, ground-disturbing activities (e.g., staging, access, grading), and vibrations caused by heavy equipment. If a buffer zone is not appropriately sized, any active nests may also be encroached upon or destroyed. Moreover, Project activities in close proximity to an active nest may result in incidental take of individual eggs or nestlings within the nest. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable foraging habitats. The MND should revise the mitigation measure with actions that would ensure the Project does not result in incidental take of individuals or active nests.

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Evidence impact would be significant: Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). It is unlawful to take, possess, or needlessly destroy the nest or eggs of any raptor.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #5: Mitigation Measure 3 – The City shall revise Mitigation Measure 3 to incorporate the underlined language and omit language in strikethrough:

Project activities shall occur outside the nesting season for migratory birds and raptors (February 1 through September 15, as early as January 1 for some raptors). If Project activities occur during or close to the nesting season, a A nesting bird and raptor survey shall be conducted by a qualified biologist within 744 days prior to the start of construction/ground disturbing activities. The qualified biologist shall survey the entire Project site and areas within a biologically defensible buffer zone surrounding the Project site. If Project activities are delayed or suspended for more than 7 days during the nesting season, the nesting bird and raptor survey shall be repeated. If active bird nests are identified during the survey, the species shall be identified, and a no-disturbance buffer shall be established around the active nest. the applicant shall contact the California Department of Fish and Wildlife to determine the appropriate mitigation/management requirements. Impacts to nesting birds will be avoided by delay of work or establishing At a minimum, a buffer of 500 feet around active raptor nests and 100 50 feet around other migratory bird species nests. 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. A 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 Comments

Western Joshua Trees. The MND states that there are western Joshua trees within the Project site and provides Mitigation Measure 2 for the Project proponent to obtain a Western Joshua Tree Conservation Act permit. It is unclear whether all of the western Joshua trees would be removed, or some will remain in place as part of landscaping. CDFW recommends the MND be revised to state the total number of trees proposed for removal and if any will remain on site.

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Landscaping. The Project proposes to install landscaping throughout the Project site. CDFW recommends the City incorporate a planting palette in the MND of the native vegetation that be used as landscaping for this Project. The Project proponent should use only native species found in naturally occurring vegetation communities within or adjacent to the Project site. The Project proponent should not plant, seed, or otherwise introduce non-native, invasive plant species to areas that are adjacent to and/or near native habitat areas. Accordingly, CDFW recommends the Project proponent restrict use of any species, particularly 'moderate' or 'high' listed by the [California Invasive Plant Council](#) (Cal-IPC 2024). These species are documented to have substantial and severe ecological impacts on physical processes, plant and animal communities, and vegetation structure.

Lighting Design. During the operational phase of the Project, night lights installed throughout the Project site may impact wildlife occupying the adjacent vacant land. CDFW recommends the Project proponent incorporates methods that would minimize adverse effects of artificial night lighting. These methods may include but is not limited to directing outside lights downward and away from vacant land, limiting night lighting use, and using the lowest possible correlated color temperature for the goal of the lighting.

Data. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database [i.e., CNDDB], which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special status species detected by completing and submitting [CNDDB Online Field Survey Form](#) (CDFW 2024c). The Project proponent should ensure that data was submitted data properly, with all data fields applicable filled out, prior to finalizing/adopting the environmental document. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred. The Project proponent should provide CDFW with confirmation of data submittal.

Mitigation and Monitoring Reporting Plan. CDFW recommends updating the MND's proposed Biological Resources Mitigation Measures to include mitigation measures recommended in this letter. Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments [Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15126.4(a)(2)]. As such, CDFW has provided comments and recommendations to assist the City in developing mitigation measures that are (1) consistent with CEQA Guidelines section 15126.4; (2) specific; (3) detailed (i.e., responsible party, timing, specific actions, location), and (4) clear for a measure to be fully enforceable and implemented successfully via mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting

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Plan (MMRP; Attachment A).

Filing Fees

The Project, as proposed, could 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 in order for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

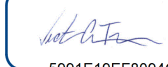
Conclusion

CDFW appreciates 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)].

Questions regarding this letter or further coordination should be direct to [Julisa Portugal](#)¹, Environmental Scientist, at (562) 330-7563.

Sincerely,

DocuSigned by:



5991E19EF8094C3...

Victoria Tang
Environmental Program Manager
South Coast Region

ec: California Department of Fish and Wildlife
Jennifer Turner
Steve Gibson
Cooper Wall
Frida Diaz-Barriga
Cindy Hailey

References:

California Herps. 2024. Northern Legless Lizard – *Anniella pulchra*. Available at:
<https://californiaherps.com/lizards/pages/a.pulchra.html#originaldescription>

¹ Julisa.Portugal@wildlife.ca.gov

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[CBD] Center for Biological Diversity. 2024. To List California Populations of the Western Burrowing Owl (*Athene cunicularia hypugaea*) as Endangered or Threatened Under the California Endangered Species Act. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=221396&inline>

[CDFW] California Department of Fish and Wildlife. 2024a. California Natural Diversity Database. Available at: <https://wildlife.ca.gov/Data/CNDDDB>

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State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Attachment A: Draft Mitigation and Monitoring Reporting Plan

CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		Timing	Responsible Party
MM-BIO-1 – Mitigation Measure 4	<p>A pre-construction burrowing owl clearance survey shall be conducted no more than 14 days prior to any 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 (CDFG 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 minimize 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 and be based on the species status (i.e., breeding, non-breeding) and proposed level of disturbance. If an occupied burrow is found within the development footprint, the qualified biologist shall prepare an Impact Assessment and</p>	Prior to issuance of City permits	Project Proponent/ Qualified Biologist

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	<p>Burrowing Owl Mitigation Plan in accordance with CDFW's Staff Report on Burrowing Owl Mitigation. The Project proponent shall contact CDFW to develop appropriate mitigation and management procedures and a final Burrowing Owl Mitigation Plan shall be submitted to the City and CDFW for review and approval prior to Project activities.</p> <p>If burrowing owl presence is confirmed, the Project proponent shall offset impacts by acquiring CDFW-approved mitigation lands for the species. The potential mitigation land shall have the following: 1) have presence of burrowing owl; 2) replace the impacted burrowing owl habitat area at a minimum of 2:1 ratio to ensure no net loss of habitat; and 3) be of equivalent or greater habitat value than that of the Project site. Prior to acquisition of potential mitigation land, the Project proponent shall provide CDFW with the appropriate documentation for property eligibility. Requested documentation may include, but is not limited to, a biological report, preliminary title report, mineral risk assessment report, and Phase I Environmental Site Assessment report. Following CDFW written approval of potential mitigation land, the Project proponent shall protect the land 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, to be determined by</p>		
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	CDFW, shall also be provided for the long-term monitoring and management of mitigation lands.		
MM-BIO-2 – Pre-construction Survey	Within 72 hours of Project-related activities, a qualified biologist with the appropriate handling permits shall conduct a survey to determine presence of northern California legless lizard. The qualified biologist shall survey the proposed impact areas and a 50-foot buffer. Surveys shall incorporate appropriate methods to detect these species, including individuals that could be concealed in burrows, beneath leaf litter, or in loose soil prior to any Project activities in areas that have or may have the potential to support these species. If a special-status species is found, the qualified biologist shall contact CDFW, and the species shall be passively ushered out of harm's way to an area that is unaffected by the Project. If the Project requires SCC to be removed, disturbed, or otherwise handled, the qualified biologist shall obtain all appropriate permits and prepare a species-specific list (or plan) of proper handling and passive relocation protocols. The list (or plan) of protocols shall be implemented during Project construction and activities/biological construction monitoring.	Prior to and during Project activities	Qualified Biologist
MM-BIO-3-Compensatory Mitigation	For SSC that have been confirmed and/or are expected to occur within the Project site, the Project proponent shall provide compensatory mitigation for temporary and permanent loss of any habitat supporting SSC. There shall be no net loss of habitat supporting SSC [CEQA Guidelines, § 15370(e)]. Compensatory mitigation shall be provided within the Project boundary at no less than 2:1. Mitigation shall provide appropriate habitat (depending on the species), refugia, and habitat structures that supports	Prior to issuance of City permits	Project Proponent

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	that species (e.g., woody material, rocks, brush piles, pools, burrows). Any proposed mitigation area/plan shall include a discussion on the territory size; nesting, breeding, foraging, and refuge locations; invasive, non-native plant and wildlife species present; food availability; and how all life cycle functions will be mitigated. The replacement habitat shall 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.		
MM-BIO-4-Injured/Dead Wildlife	If any special status wildlife species are found, harmed during relocation, or a dead or injured animal is found, work in the immediate area shall stop immediately, the designated biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW and the City within 3 calendar days of the incident or finding. The report 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.	During Project activities	Qualified Biologist
MM-BIO-5-Mitigation Measure 3	Project activities shall occur outside the nesting season for migratory birds and raptors (February 1 through September 15, as early as January 1 for some raptors). If Project activities occur during or close to the nesting season, a nesting bird and raptor survey shall be conducted by a qualified biologist within 7 days prior to the start of construction/ground disturbing activities. The	Prior and during Project activities	Qualified Biologist

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	<p>qualified biologist shall survey the entire Project site and areas within a biologically defensible buffer zone surrounding the Project site. If Project activities are delayed or suspended for more than 7 days during the nesting season, the nesting bird and raptor survey shall be repeated. If active bird nests are identified during the survey, the species shall be identified, and a no-disturbance buffer shall be established around the active nest. At a minimum, a buffer of 500 feet around active raptor nests and 100 feet around migratory bird species nests. 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. A 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>		
REC 1 – Western Joshua Tree Revision	<p>CDFW recommends the MND be revised to state the total number of trees proposed for removal and if any will remain on site.</p>	<p>Prior to adopting CEQA document</p>	<p>Lead Agency</p>
REC 2 – Landscaping	<p>CDFW recommends the City incorporates a planting palette in the MND of the native vegetation that be used as landscaping for this Project. The Project proponent use only native species found in naturally occurring vegetation communities within or adjacent to the Project site. The</p>	<p>Prior to adopting CEQA document</p>	<p>Lead Agency/ Project Proponent</p>

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	Project proponent should not plant, seed, or otherwise introduce non-native, invasive plant species to areas that are adjacent to and/or near native habitat areas. Accordingly, CDFW recommends the Project proponent restrict use of any species, particularly 'moderate' or 'high' listed by the California Invasive Plant Council.		
REC 3 – Lighting Design	CDFW recommends the Project proponent incorporates methods that would minimize adverse effects of artificial night lighting. These methods may include but is not limited to directing outside lights downward and away from vacant land, limiting night lighting use, and using the lowest possible correlated color temperature for the goal of the lighting.	Prior to and after Project activities	Project Proponent

October 21, 2024

Advocates for the Environment

A non-profit public-interest law firm
and environmental advocacy organization



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Via U.S. Mail and email to jswain@cityoflanasterca.org

Re: Comments on the Draft Mitigated Negative Declaration for Conditional Use Permit
No. 21-001 (SCH No. 2024080570)

Dear Ms. Swain:

Advocates for the Environment submits the comments in this letter regarding the Mitigated Negative Declaration (MND) for the proposed Conditional Use Permit No. 21-001 (Project), near the intersection of Avenue L and 15th Street West in the City of Lancaster (City). The Project proposes to construct and operate a mixed-use development on the 10-acre site which is currently zoned as non-urban residential, but would require both a General Plan Amendment and a Zone Change. The development would include a 235-room hotel with a 3,800 square foot clubhouse; two apartment buildings with a total of 181 units; and three restaurant/retail pads totaling 12,800 square feet.

We are a non-profit public-interest law firm that uses environmental law to fight to improve the environment in California. We have reviewed the Mitigated Negative Declarations released in August 2024 (MND) and submit comments regarding the sufficiency of the MND's Greenhouse-Gas (GHG) analysis under the California Environmental Quality Act (CEQA). We submit these comments on our own behalf, and on behalf of our client, White Fence Farms Neighbors, an unincorporated association whose members live in the vicinity of the Project.

Analysis of Environmental Impact of CUP 21-001 Violates CEQA

The MND fails to provide the minimum level of information required by CEQA in order to evaluate several of the Project's environmental impacts. As in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d, 296, 305, "the initial study in fact displayed only a token observance of regulatory requirements." Boxes are checked in the tables for each impact type, but the MND and its accompanying documents, in many cases, fail to provide factual support for its conclusions that the impact would be less than significant. "The agency should not be allowed to hide behind its own failure to gather relevant data." (*Id.* at p. 311.) The burden of environmental investigation is on the government, not the public. Thus, a fair argument can be based on limited facts in the record if a lead agency has failed to adequately analyze the

environmental effects of the project. (*Ibid.*) In *Christward Ministry v. Superior Court*, the court ordered the preparation of an EIR because the initial study and MND used brief, conclusory language that did not provide an adequate basis for its significance conclusions. (184 Cal.App.3d 180, 197.)

Additionally, "if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1111, quoting CEQA Guidelines, § 15064, subd. (f)(1).) This comment letter serves to present a fair argument to the lead agency that this Project may have a significant environmental impact, based on the information provided in the MND and other readily available sources.

The City Provides No Support for All Potentially Significant Effects Being Covered by an Earlier CEQA Document

The MND states that all potential significant effects have been analyzed adequately in an earlier EIR or Negative Declaration. (MND, p. 6 – 7.) But nowhere does it identify the documents it claims have adequately analyzed or provided mitigation for this Project's environmental impacts.

Aesthetics

One of the significance thresholds adopted to analyze aesthetic impact for non-urbanized areas is whether the Project would "substantially degrade the existing visual character or quality or public views of the site and its surroundings" from a public vantage point. (MND, p. 9.) The City ignored this aspect of the aesthetic significance threshold and instead chose to use the urban threshold of whether the Project would conflict with applicable zoning scenic quality regulations. (MND, p. 10.) By doing so, it completely ignores the fact that the Project Site is located in a non-urban residential area, and public views from the surrounding residences, including the community of White Fence Farms, would be substantially degraded due to the development of this mixed-use site.

The Project site is currently undeveloped, vacant land which is home to wildlife and plants, including the protected Western Joshua Tree. The existing land provides a view of natural lands and provides a buffer between the rural residential areas and the commercial developments on the other side of the freeway. The development of this Project would substantially degrade the public views of the site and its surroundings, which the City failed to consider under the significance threshold that it adopted for non-urbanized areas.

Air Quality

The City improperly deferred a finalized transportation study to a later date, which invalidates the City's analysis and the conclusion that air quality impact would be less than significant. Although the City estimated the number of vehicle trips at 4,500 per day, it undermined the veracity of this statement by stating that final numbers are yet to be determined in a final air quality analysis. (MND, p. 14.) Relying on a study to be conducted after project approval violates CEQA.

CEQA prohibits lead agencies from avoiding to undertake a reasonable investigation of the likely impact during the preparation of the MND, and there are models that exist that can help estimate a project's number of vehicle trips and VMT based on project characteristics. The City also provides no support for its conclusion that "the amount of traffic generated by the project is not sufficient to significantly impact nearby intersections or roadways and create or contribute considerably to violations of air quality standards." (MND, p. 14.) The MND cites no evidence to support this contention.

The City also provides inadequate evidence that Mitigation Measure 1 (MM-1), which would provide personal protective respiratory equipment to construction workers and provide information to all construction personnel and visitors about Valley Fever, would reduce Valley Fever impacts to the level of insignificance. (MND, p. 15.) In particular, the City did not consider potential impact of Valley Fever on nearby residents.

Further, the MND did not include any acknowledgement of the potential risk of Valley Fever due to excessive use of the dirt roads. The Project should incorporate more mitigation measures in order to reduce the potentially significant impact of Valley Fever, such as using water, appropriate soil stabilizers, and or re-vegetation to reduce airborne dust. Anyone who lives, visits, or travels through the areas where the Valley Fever-causing fungus grows in the soil may acquire Valley Fever, but the risk is substantially increased when topsoil is heavily disturbed, such as from grading and construction, and vehicles driving on nearby dirt roads. The fungal spores that cause Valley Fever can travel up to 75 miles away from the location of origin.¹ This means that any fugitive dust emissions that are not adequately mitigated at the Project Site could infect someone in locations as far away as San Bernardino with Valley Fever.

The surrounding community is likely to have increased risk such that residents will not only be exposed to the fungal spores released from construction and grading activities, but will also be at heightened risk due to the increased number of vehicles from the Project's residents and customers that would be traveling on the dirt roads surrounding the Project Site, which otherwise would not be as extreme of a risk in the current zoning as a rural residential area and

¹ American Lung Association; <https://www.lung.org/blog/severe-valley-fever-story#:~:text=The%20fungal%20spores%20are%20often,spread%20from%20person%20to%20person.>

undeveloped state of the Project Site. Therefore, the City did not sufficiently analyze the potentially significant air quality impact that the Project could have.

Biological Resources

The biological impact analysis was inadequate and the City did not provide adequate support for its determination of less-than-significant impact. The Project would require the “removal of the Joshua Trees,” which implies that potentially all of the Joshua Trees could be removed. (MND, p. 18.) But the City failed to provide adequate information to decision-makers and the public because it did not clearly specify the number or locations of Joshua Trees to be removed to construct the Project.

Misleading Description of the Number of Joshua Trees on Site and Biological Impact of Joshua Tree Removal

The Biological Resources Report prepared for the MND deceptively represented that the Project site has twenty-eight Joshua Trees “including two cluster-clones of three to six individuals” when in reality the Project would have two clusters of three to six trees each, in addition to twenty-eight individual Joshua Trees. (*Compare* Biological Resources Report, p. cy-1 *with* Biological Resources Report, Table 1, *and* MND, p. 18 [“The site supports approximately 28 Joshua trees with two additional clusters of three to six individuals.”])

In other words, the description in the Biological Resources Report may lead some decision-makers and the public to think that there are 28 impacted trees, rather than the true number which may be closer to 40, and the biological impact study failed to account for the actual number of Joshua Tree individuals which are in the two clusters. As a result, the biological impact study downplays the number of Joshua Trees that will be adversely impacted by this Project. This is a consequential defect, because mitigation under the Western Joshua Tree Conservation Act or an incidental take permit accounts for each individual tree, so it is impossible to know the amount of mitigation necessary, or the appropriate fee or mitigation measures that will be required.

The MND also indicated that no endangered, threatened, rare or sensitive plant species were found on the site. They could not say that no protected plant species was found on the site, because the Western Joshua Tree is protected by the Western Joshua Tree Conservation Act. It is also a candidate species for listing under the California Endangered Species Act. The Joshua Tree is a sensitive plant species because it requires very specific conditions to grow and reproduce, and the species is substantially threatened by climate change and encroaching development.²

² See Natural Resources Agency Department of Fish and Wildlife “Report to the Fish and Game Commission Status Review of the Western Joshua Tree (*Yucca brevifolia*),” March 2022. [Western Joshua Tree Status Review] Available at:

The biological impact analysis understated the importance and protection status of the Western Joshua Tree, and did not commit to mitigation which would adequately reduce the biological impact to a less than significant level.

The MND Did Not Propose Adequate Mitigation to Reduce the Project's Potentially Significant Impact on Joshua Trees

The only mitigation measure, Mitigation Measure 2, regarding the Western Joshua Tree was presented as follows:

The project applicant shall obtain a Western Joshua Tree Conservation Act permit from the California Department of Fish and Wildlife to remove the Joshua trees on the project site. As part of obtaining the Western Joshua Tree Conservation Act permit, the project applicant shall follow all measures outlined in the executed permit and pay all mitigation fees identified under the Western Joshua Tree Conservation Act. A copy of the fully executed permit shall be provided to the City of Lancaster prior to the issuance of any construction-related permits.

(MND, p. 19.)

Because of the special status of the Joshua Tree, removal of the Joshua Trees on the Project Site would be a significant impact, requiring all feasible mitigation under CEQA. Mitigation Measure 2 would allow the Applicant to remove the Joshua Trees on the Project Site, but the only mitigation required is the payment of mitigation fees. The MND contains no showing that the payment of these fees constitutes all feasible mitigation.

Compliance with the Western Joshua Tree Conservation Act Does Not Equate to a Less Than Significant Biological Impact Under CEQA

The chosen biological significance threshold that applies to Joshua Trees is whether the Project would have a substantial adverse effect, not whether the applicant will comply with the Western Joshua Tree Conservation Act when removing trees. Therefore, satisfaction of the Act's requirements does not necessarily bring the impact on Joshua Trees to a less than significant level. Intentionally removing live and healthy Joshua Trees, regardless of conformance to the Western Joshua Tree Conservation Act, would have a significant biological impact based on the relevant CEQA threshold which was adopted by the lead agency.

Here, 71% of the Western Joshua Trees on site are in at least fair to good health, and half of them have signs of recent reproduction. (MND, Biological Resources Report, Table 1.) This point was not adequately discussed in the MND, which leads to a misrepresentation of the

https://www.biologicaldiversity.org/programs/public_lands/pdfs/Western_Joshua_Tree_Status_Review_2022-04-13.pdf

harm that it would cause to remove the Joshua Trees on this site. A Western Joshua tree may take as long as 50 years before being able to reproduce, and can potentially survive more than 150 years.⁵ Further, clonal clusters, of which the Project site has two, reproduce asexually allowing them to survive indefinitely in the right conditions. These considerations demonstrate that the Project could have a potentially significant biological impact, even with compliance with the Western Joshua Tree Conservation Act.

Western Joshua Trees grow very slowly, at an average of 3.75 centimeters per year, and the standard way of estimating the age of a Joshua Tree is by their height.⁶ The average height of the Western Joshua Trees on the Project Site is eight feet tall, putting the average age at nearly 70 years old.⁷ However, it is likely that many trees on the site are substantially older than the average because the recent signs of reproduction could mean that there are also many juveniles on the site, bringing down the average height. Based on the information provided in the biological study, which did not analyze each Joshua Tree individually, it is impossible for the public and decision-makers to understand the impact to which this Project will have on the long-term stability of the Joshua Tree population.

The City Can Require More Mitigation to Reduce the Impact on the Western Joshua Tree to a Less-than-significant Level

After providing the public with adequate information regarding biological impact, the applicant may mitigate this impact on the Project Site and surrounding areas by entering into a conservation easement with a qualified organization.⁸ The City did not provide sufficient evidence to support that the potential impact to the Joshua Tree would be less than significant. Based on all of the information above, there is a likelihood that removal of the Joshua Trees from the Project Site would have a significant biological impact, so the lead agency should voluntarily take on all of the mitigation necessary to reduce the impact to a less-than-significant level.

⁵ Western Joshua Tree Status Review, p. 1. Available at: https://www.biologicaldiversity.org/programs/public_lands/pdfs/Western_Joshua_Tree_Status_Review_2022-04-13.pdf

⁶ Western Joshua Tree Status Review, p. 28. Available at: https://www.biologicaldiversity.org/programs/public_lands/pdfs/Western_Joshua_Tree_Status_Review_2022-04-13.pdf

⁷ $3.5 \text{ cm/year} = 0.114829 \text{ feet/year}$

$8 \text{ feet} \div 0.114829 \text{ feet/year} = 69.66 \text{ years}$

⁸ See <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits#how-do-i-apply> ["A conservation easement is a voluntary legal agreement that protects the land by permanently limiting some uses that would compromise the conservation values or the landowners' goals for the property."]

The City Failed to Adequately Consider Potential Impact to the Threatened Mojave Desert Tortoise

The MND provided inadequate information about the potential for significant impact to the threatened Mojave Desert Tortoise. The U.S Fish and Wildlife Service instructs surveyors to investigate not only the Project Site, but also the entire “action area,” when determining the potential presence of the Mojave Desert Tortoise, which in this case would include the surrounding dirt roads.⁹ Here, the biological impact survey did not follow these protocols because the surveyor only investigated the 9-acre Project Site when determining that there were no signs of the Mojave Desert Tortoise. (MND Biological Resource Report, p. cy-1.) First, the Project Site is listed as approximately 10 acres in the MND, leaving concern over the remaining acre of land. (MND, p. 53.)

Second, the Project is located within the habitat range of the Mojave Desert Tortoise, so despite not seeing any signs of the survey which was not conducted in Fall, the most active time of year for desert tortoises, there is some chance that signs of Mojave Desert Tortoises may become apparent during Project construction or operations. Thus, it is imperative that the MND include a mitigation measure for an enforceable protocol to take if signs of a Mojave Desert Tortoise are found at any time, similar to the mitigation measure for a pre-construction survey for burrowing owls, with the addition of all protocols that are encouraged by the U.S. Fish and Wildlife Service.

Energy

The energy analysis is inadequate. The MND states that the Project would be required to comply with Title 24, but this alone does not ensure that the Project’s energy usage is not wasteful. (MND, p. 23.) Title 24 sets energy efficiency standards, not energy usage standards or limits. Under the chosen threshold – whether the Project would “[r]esult in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources” – the City failed to demonstrate how the Project would comply with reducing energy waste and reducing unnecessary consumption.

There are many potential sources of energy waste from Project operations, including indoor climate control systems, appliances, and electronics. Even if such systems are the most energy efficient possible, it would still contribute to energy waste if they were not shut down or unplugged when not in use. For example, while Title 24 requires installing automatic shutoff light switches, these can be programmed either at predetermined intervals of time, or based on

⁹ U.S. Fish and Wildlife Service, “Preparing for any action that may occur within the range of the Mojave Desert Tortoise,” p. 4. Available at: https://www.fws.gov/sites/default/files/documents/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2019.pdf

real-time occupancy sensing. The choice in programming could make a difference in the amount of energy wasted when buildings are unoccupied.

The City did not provide any evidence or analysis to support its conclusory statement that project-related incremental increase in the use of energy bound in construction materials would not substantially increase demand for energy. In fact, the MND suggests the contrary by stating that “substantial reduction in energy impacts for construction materials” are possible by careful choice of construction materials. (MND, p. 23.) These statements are inherently contradictory because they assert that construction materials are simultaneously not going to increase the Project’s energy usage but if they are changed it would drastically reduce the Project’s energy usage. Nonetheless, the City fails to actually mandate careful material choices because it does not require that the Project use low-energy construction materials as a mitigation measure.

Lastly, the energy analysis notes that Lancaster Choice Energy allows residents and businesses to opt into up to 100% renewable energy without requiring that the Project participates in it. (MND, p. 24.) The City could enter into agreements with the applicants and/or tenants to prohibit opting out of the Lancaster Choice Energy Program as a mitigation measure, especially because the price is comparable to SCE’s energy.¹⁰ Yet, the default product, Clear Choice, only provides 35% renewable energy, and is actually lower than SCE’s approximately 40% of energy from renewable resources.¹¹ So the default option under Lancaster’s Choice Energy program would not be sufficient to reduce the Project’s energy impact.

The 100% renewable option is called Smart Choice and is on an opt-in basis because it is more expensive than Clear Choice and SCE. Therefore, there is very little incentive for commercial tenants to opt into this program without an agreement requiring them to do so.

The City’s conclusion that the Project would have a less than significant energy impact is unsupported, and the Project would likely have a significant energy impact without the implementation of sufficient mitigation measures.

Geology and Soils

The Geology and Soils analysis violates CEQA because the City did not consider the potentially significant impact that increased use of groundwater in the region would contribute to subsidence, and the potentially significant impact of soil erosion or the loss of topsoil.

¹⁰ <https://lancasterenergy.com/about-le/faqs/#toggle-id-21>

¹¹ Southern California Edison Green Rates and Renewables Programs Fact Sheet, p. 2 [“SCE is a national leader in clean energy and 42.9% of electricity delivered to customers in 2021 came from carbon-free resources.”] Available at https://www.sce.com/sites/default/files/custom-files/PDF_Files/Green_Rate_Business_Factsheet_2023.pdf. See also <https://lancasterenergy.com/about-le/faqs/#toggle-id-21>.

The City Did Not Consider the Likelihood of Increased Land Subsidence

One of the chosen significance thresholds for geology and soils was analyzing whether the Project is located on land that is “unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.” (MND, p. 25.) The City failed to consider any potential for increased ground subsidence in the region due to the Project.

Land subsidence is the gradual settling or sudden sinking of the Earth's surface owing to subsurface movement of earth materials that can result in the loss of aquifer storage, increased flooding, cracks and fissures at land surface, damage to man-made structures, and associated economic costs. One of the principal causes of land subsidence is the gradual compaction of susceptible aquifer systems that can accompany groundwater-level declines caused by groundwater pumping.

(USGS Subsidence Report, p. 23.)¹²

Lancaster is already affected by and at high risk for increased subsidence due to the local soil composition and the close proximity to the San Andreas fault. Subsidence on the Project Site or in the region is likely to worsen from increased development, especially because the Project would create a strain on the local groundwater system.¹³

Residents of the local White Fence Farms community have noticed that they have had to increasingly rely on water from the Antelope Valley-East Kern Water Agency (AVEK), rather than their wells that they have been relying on for years. Recent development in Lancaster has created a noticeable strain on groundwater, and as groundwater pumping increases, land subsidence becomes an increased risk.

As discussed in the U.S. Geological Survey subsidence report, the Antelope Valley groundwater basin, which includes both Lancaster and Palmdale, has been in overdraft since at least 2011, meaning that groundwater extractions are in excess of Court-defined safe yield of the groundwater basin. (Subsidence Report, p. 1.) Not only does this raise concerns of whether the local water resources could provide for such a large development as this Project, but also presents a fair argument that there could be a significant impact on geology and soils due to the Project placing excess strain on local groundwater, creating increased risk of subsidence.

¹² Saide, *et al.*, “Groundwater-Flow and Land-Subsidence Model of Antelope Valley, California.” United States Geological Survey. October 28, 2014. Available at <https://pubs.usgs.gov/sir/2014/5166/>. [USGS Subsidence Report]

¹³ See <https://www.usgs.gov/special-topics/water-science-school/science/land-subsidence>

The City Did Not Adequately Discuss the Likelihood of Increased Soil Erosion

Another threshold that the City adopted was whether the Project could result in “substantial soil erosion or the loss of topsoil” (MND, p. 25.) The Project could result in substantial erosion and the loss of topsoil on the site. When vegetation is removed in the process of grading for the undeveloped site, soil becomes highly susceptible to erosion, which can be further worsened by rain and wind. The City acknowledges that the “there remains a potential for water and wind erosion during construction,” but fails to adequately mitigate this risk. The proposed Project would be required, under the provisions of the Lancaster Municipal Code (LMC) Chapter 8.16, to adequately wet or seal the soil to prevent wind erosion. But even if this would successfully reduce wind erosion, wetting the soil can easily *increase* the risk of water erosion, especially during heavy rains or flooding. The best way to prevent both wind and water erosion is to ensure that there is healthy ground cover and vegetation, which the MND does not consider nor require.

Greenhouse Gases

The MND derived its GHG significance thresholds from the CEQA Appendix G Guidelines and concluded that the Project’s green-house gas emissions (GHGs) would be less than significant, claiming the Project would not generate GHGs that may have a significant effect on the environment and be consistent with plans, policies, and regulations for the reduction of GHG emissions. (MND, p. 28.)

The Significance Threshold is Not Supported by Substantial Evidence

The chosen significance threshold for GHG’s is the AVAQMD threshold, which the MND did not explain but sets a numerical threshold of 100,000 metric tons of carbon dioxide equivalent (MTCO_{2e}). However, there is no evidentiary basis for why the City of Lancaster should adhere to this as a significance threshold.

A lead agency must support its chosen threshold by substantial evidence. (CEQA Guidelines § 15064.7(b).) The City has not done so here. In particular, CEQA requires that significance determinations are based on current regulations, as well as scientific and factual data. (CEQA Guidelines §§ 15064.4(b).) Thus, thresholds which are not aligned with California’s current reduction goals are outdated. Here, the City failed to analyze or provide support for why the threshold applies to this Project, or how it adheres to California’s current GHG reduction goals, which is a clear violation of CEQA’s mandate to support the chosen significance threshold with data.

Additionally, one hundred thousand tons is a very large amount of GHG emissions for an individual project. The MND does not justify its choice of the 100,000-ton threshold instead of the thresholds recommended or adopted by other air districts, such as the 1,100 MTCO_{2e}

threshold recommended by the Sacramento Metro Air Quality Management District, or the County of San Bernardino's 3,000 MTCO₂e per year screening level. (See Greenhouse Gas Thresholds for Sacramento County,¹⁴ p. 1; *see also*, County of San Bernardino Greenhouse Gas Emissions Development Review Process Screening Tables¹⁵) This 10,000-ton numeric threshold is therefore not supported by substantial evidence.

The City Did Not Demonstrate How the Project's GHG Emissions Would Fall Within the AVAQMD Threshold

The conclusory statement that emissions will be less than the AVAQMD threshold is not supported by any evidence, because the MND did not explain what the AVAQMD threshold is, nor include any estimation of the Project's GHG emissions. While CEQA does not necessarily require quantification of GHGs, in this instance where a numerical threshold is adopted, the lead agency must provide evidence that the GHG emissions of the project would fall under the threshold.

The requirement that "the specific GHG emission estimates would be confirmed to be less than the thresholds prior to approval of the project" violates CEQA because it defers analysis of the significance of this impact until after project approval. Vehicle emissions are one of the main sources of GHGs. The City provides no evidence of the magnitude of the mobile source emissions because doesn't quantify VMT or estimate the vehicle types that would be expected in the daily vehicle trips. (MND, p. 14; pp. 47-48). Therefore, the decision-makers and the public do not have an adequate ability to evaluate the Project's GHG impact.

The Project Conflicts with Applicable Plans, Policies, and Regulations

The City determined that the Project would have a less-than-significant GHG impact because it is required to comply with Lancaster's Net Zero Energy Ordinance, Water Efficient Landscape Ordinance, and "other requirements which increase the efficiency of buildings and reduce air emissions." (MND, p. 28.) This determination is overly conclusory and does not provide support for how the bare minimum requirements would reduce the Project's GHG emissions below the CEQA significance threshold.

The City did not provide adequate evidence that the Project would adhere to the SCAG RTP/SCS. The City stated that Goals 3, 4, 6, and 8 do not apply to this project, but provided no support for this claim. There is a fair argument that the Project may conflict with the SCAG RTP/SCS because it does not achieve Goal 10: to promote conservation of natural and agricultural lands and habitat restoration. The City treated this goal as inapplicable to the

¹⁴ <https://www.airquality.org/LandUseTransportation/Documents/SMAQMDGHGThresholds2020-03-04v2.pdf>

¹⁵ https://www.sbcounty.gov/uploads/LUS/GreenhouseGas/GHG_2021/GHG%20Revised%20Screening%20Tables%20-%20Adopted%209-20-2021.pdf

Project, but it is directly applicable because the Project is in the native range of many species, including the protected desert tortoise and Joshua Tree.

The City claimed that the Project would be consistent with the “applicable policies of the 2022 Scoping Plan,” without explaining which of the plan’s policies are applicable nor how the Project would conform to them. The 2022 Scoping Plan sets a goal for 50% of all industrial energy demand to be electrified by 2045 (2022 CARB Scoping Plan, p. 77). The MND makes no showing that the Project is consistent with this goal. The 2022 CARB Scoping Plan also places particular emphasis on decarbonizing industrial facilities by “displacing fossil fuel use with a mix of electrification, solar thermal heat, biomethane, low- or zero-carbon hydrogen, and other low-carbon fuels to provide energy for heat and reduce combustion emissions” (2022 CARB Scoping Plan, p. 208). Based on the limited information provided in the MND, the Project would not be consistent with this goal, because it does not involve any project features or mitigation measures that would adequately prevent the use of non-renewable fossil fuels that emit GHG emissions and would not utilize alternative fuels to the extent feasible.

There is also no support to demonstrate that the Project would comply with the Lancaster CAP. The public does not have enough information to evaluate and comment on potential conflicts with the Lancaster CAP because the MND does not provide enough information about GHG impact to determine any areas of potential conformance or conflict.

The MND Should Have Analyzed All Applicable Plans

The City chose, as its second GHG threshold, whether the Project would “[c]onflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.” (MND, p. 28.) This language requires that the MND analyze the Project’s consistency with all other applicable plans, not just the plans that the City prefers to analyze.

A lead agency must consider a project’s GHG impact over time to reasonably evaluate the full extent of the Project’s lifetime environmental impact as CEQA requires. The MND failed to show consistency with long-term State GHG goals, including the California Air Resources Board (CARB) 2017 Scoping Plan and Executive Order B-55-18 (EO B- 55-18).

EO B-55-18 requires the State of California to achieve carbon neutrality—net zero GHG emissions—by 2045. The Project is inconsistent with EO B-55-18 because it does not prohibit the use of gasoline, diesel, and natural gas. In fact, it is likely that heavy-duty diesel trucks will be used for deliveries to the commercial and restaurant portions of the Project site, which are a considerable source of fossil fuel burning. Burning non-renewable fuels results in substantial GHG emissions, preventing the Project from ever achieving carbon neutrality, unless it enters into agreements with the applicant or future tenant to ensure that fossil fuel use is on track to be eliminated by 2045 as required by EO B-55-18.

The 2017 Scoping Plan was developed to facilitate California's compliance with SB 32, which requires statewide GHG emissions to be reduced to 40% below 1990 levels by 2030. (Health & Safety Code § 38566.) The MND did not discuss how the Project is consistent with any of the goals, including the 2050 goal of 80% below 1990 levels. The 2017 Scoping Plan also sets out statewide goals for total GHG emissions targets of 6 MTCO₂e/capita by 2030, and 2 MTCO₂e/capita by 2050 (CARB Scoping Plan, p. 99). The Project would employ 150 people¹⁶ and have an unknown residential capacity. Therefore, there is not enough information provided to determine the Project's consistency with SB 32. Even assuming each of the Project's 181 apartment units housed four people, the Project's emissions would have to be below 3,000 MTCO₂e per year in order for the capita GHG emissions to meet the 2030 goal: under 2,000 MTCO₂e per year for residential uses and under 1,000 MTCO₂e per year for commercial uses.¹⁷

Consequently, the City did not provide enough evidence to support its finding of less-than-significant impact, and the Project would likely have a significant GHG impact under at least the second threshold because it is inconsistent with applicable plans for the reduction of GHGs. By failing to acknowledge and analyze all applicable plans for the reduction of GHGs, the City did not carry out sufficient analysis to make a determination under the thresholds that it chose. If the City had appropriately analyzed all applicable plans, it would likely have found a significant impact, requiring a full Environmental Impact Statement (EIS).

Hydrology and Water Quality

The Hydrology and Water Quality Analysis violated CEQA because the City did not adequately support its findings of less than significant impact with mitigation, and the mitigation measures were improperly deferred.

The City Did Not Adequately Consider the Project's Adverse Impact on Groundwater Management

One of the chosen thresholds to analyze the Project's hydrology and water quality impact is whether the Project would "[s]ubstantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin." (MND, p. 32.) In addressing this significance threshold, the City stated that the Project would have a less than significant impact because it "would not include any groundwater wells or pumping activities. All water supplied to the proposed project would be obtained from the White Fence Farms Mutual Water Company (WFFMWC) after meeting the agency's requirements." (MND, p. 33.) However, a large

¹⁶ <https://ceqanet.opr.ca.gov/2024080570>

¹⁷ $[181 \text{ units} \times 4 \text{ people}] \times 6 \text{ MTCO}_2\text{e/capita} = 1,448 \text{ MTCO}_2\text{e}$
 $150 \text{ employees} \times 6 \text{ MTCO}_2\text{e/capita} = 900 \text{ MTCO}_2\text{e}$

portion of the water of White Fence Farms Mutual Water Company comes from local wells owned by White Fence Farms residence, and then is mixed with the Antelope Valley-East Kern (AVEK) surface water to provide water for the community. After wells have been used to support White Farm's small community of rural residential housing, the WFFMWC has had to increasingly rely on AVEK water as development increases in the region. The MND did not consider any of these factors when concluding that the Project would not have a significant impact on hydrology.

The City Did Not Adequately Consider the Potential Impact of Flooding on Water Quality

There is evidence that the Project could result in substantial erosion and surface runoff from site flooding. With grading activities and removal of vegetation, soil becomes highly susceptible to erosion. This already high erosion risk caused by the Project's development is exacerbated by the fact that the Project Site could be impacted by nearby flooding.

Special Flood Hazard Areas (SFHAs) are 100-year flood zones with flood elevation levels of one foot or higher. The Project Site is within mere miles of a SFHA which surrounds the local Amargosa Creek. Moreover, the Project is dangerously near, if not partially in, a flood zone. The MND noted that the Project Site would overlap two flood zones, categorized as Zone X and Zone X-Shaded. But the City erroneously stated that it would be outside of a 100-year flood zone, because Flood Zone X is defined as either: (1) a 100-year flood zone of depths less than one foot; (2) having drainage areas of less than 1 square mile; (3) protected from the 1% flood risk by levees; or otherwise (3) a 500-year flood zone.¹⁸ Which means that although the Project Site itself is not in a SFHA, there could be a 1% annual risk of flooding on the Project site, although at lower flood elevations. While the flood elevation does impact potential flood damage, erosion can occur or be aggravated by rainfall alone, and being near a flood zone substantially increases the risk and extent of erosion on the Project Site and nearby White Farms community. This would also increase the risk of surface runoff from areas near Amargosa Creek to create potential on-site flooding. The MND did not acknowledge the potential flood concerns of the region as it pertains to erosion, nor did it discuss the impact of vegetation removal on increased erosion. The City did not propose any mitigation measures for the potential hydrology and water impact because it mistakenly dismissed the impact of runoff and erosion entirely.

However, the City mentioned a project feature that would purportedly make the hydrology impact less than significant, which is that the Project would be designed based off a

¹⁸ City of Lancaster Flood Map, downloaded from Federal Emergency Management Agency (FEMA) at <https://msc.fema.gov/portal/home>. Search: "Lancaster." Download Firm Panel 06037C0420F eff. 9/26/2008. [Defining Zone X and illustrating the flood zones in the area surrounding the Project Site.]

future hydrology study in order to handle the water flows and runoff. (MND, p. 33.) This is a deferral of a lead agency's responsibility to analyze the impact at the time of doing the initial studies and resulting required CEQA analysis, whether in an EIR or MND. Relying on a study to be performed after project approval violates CEQA. Thus, the City should have already done the hydrology study and included the results in the MND, along with any mitigation measures necessary to reduce impacts to below the level of significance.

The City Did Not Adequately Mitigate the Potential Water-Quality Impact

The supposed project features that the Project would incorporate appropriate Best Management Practices (BMPs) during construction are vague and ambiguous, and a deferral of CEQA's requirement to analyze potential environmental impacts at the time of preparing the CEQA documents. It is also an improperly deferred mitigation measure. The City states that the BMPs will be determined later by Lancaster Public Works, which fails to identify which BMPs would be incorporated or how the water quality impacts would be reduced as a result. (MND, p. 33.) There is no evidence that this currently undefined set of BMPs would reduce impacts below the level of significance. Accordingly, the City failed to adequately provide information to support its conclusion that the water and hydrology impact would be less than significant.

Land Use and Planning

The City chose a significance threshold of whether the Project would "[c]ause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect." (MND, p. 34.) There are many such plans that the Project would conflict with, some of which are for the reduction of GHGs (discussed in the GHG section of this comment letter, above.)

The City did not adequately demonstrate that the Project is consistent with the policies in the Lancaster General Plan. Policy 3.6.6 of the General Plan is to "[c]onsider and promote the use of alternative energy such as wind energy and solar energy." (MND, p. 36.) The City claims that the Project will obtain energy from Lancaster Choice Energy, and would install solar panels and battery storage to the extent feasible to comply with this policy. But it is not clear that the Project is required to do any of those things and there are no enforceable mechanisms to ensure conformance with the policies of the General Plan.

Additionally, the City did not provide sufficient evidence for its claims that the Project would be consistent with the Southern California Association of Governments (SCAG) adopted Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS), referred to as Connect SoCal. Goal 5 of this plan is to "[r]educe greenhouse gas emissions and improve air quality." The City asserted that people will live and work in the same location

because the Project is mixed-use. Yet, due to the proliferation of work from home opportunities, it is unknown how many of the apartments' residents, if any, would take advantage of the nearby job opportunities. The commercial aspects of this Project would provide 150 jobs.¹⁹ But the Project plans to provide 181 apartment units, so even if there were only a single resident in each unit, there would not be enough jobs created by the Project for each resident to live and work in the same location.

Even if a substantial number of the apartments' residents were able to acquire a job in the commercial or hotel aspects of the Project, this would not be sufficient to ensure that the Project would reduce GHG emissions and improve air quality. The creation of commercial spaces and hotels encourages travel, which would cause an increase in VMT and associated automobiles that would increase GHGs and reduce air quality. There are many other factors that the City failed to consider for why the Project would not reduce GHGs or improve air quality which are discussed more thoroughly in other sections of this comment letter.

Noise

The City determined that the Project would have the potential to create a significant noise impact that would be reduced to a less than significant level by mitigation. But the City does not adequately demonstrate that the Project's significant noise impact would be sufficiently reduced by the proposed mitigation because it is improperly deferred. The mitigation requires the applicant to prepare a noise study and incorporate recommendations into the Project development before receiving permits. (MND, p. 41.) This measure does not commit the lead agency to any particular course of action to reduce noise, and therefore the decision-makers and the public are not able to effectively evaluate the potential noise impact after mitigation.

The deferral of this mitigation measure was also a deliberate avoidance of the lead agency's responsibility to determine the appropriate mitigation measures for potentially significant environmental impacts. Directing an applicant to conduct the necessary environmental studies is an improper delegation of the lead agency's responsibility to provide its independent judgement on potential environmental impacts as required by CEQA. (*Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal. App. 3d 296, 307 ["It is [...] clear that the conditions improperly delegate the County's legal responsibility to assess environmental impact by directing the applicant himself to conduct the hydrological studies subject to the approval of the Planning Commission staff."]) The City should have prepared the noise study at the earliest opportunity in the planning process, and proposed adequate mitigation measures corresponding to the potential noise impact that it finds.

¹⁹ <https://ceqanet.opr.ca.gov/2024080570>

Population and Housing

The City adopted a population and housing significance threshold of whether the Project would “[i]nduce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)” (MND, p. 44.) The City determined that there would be a less than significant impact because the Project’s incremental increase in Lancaster’s population falls within the projection of SCAG and the City. The City does not provide evidence to support this claim. In fact, the current General Plan—which would require an amendment for this Project to be built—states the importance of maintaining rural residential areas, and that Lancaster’s housing needs can be fulfilled in areas that are already zoned for commercial and urban residential units.²⁰ Therefore, the population growth that the Project would contribute to would directly induce substantial population growth in rural residential areas that was unplanned and unanticipated according to the General Plan.

Furthermore, the significance threshold requires consideration of population growth within an “area,” not necessarily the full boundaries of the lead agency’s jurisdiction. It is more appropriate to consider the population growth on the scale of the White Fence Farms community due to the potential adverse impact it would have. The current zoning of the Project Site would accommodate has a minimum lot size of 2.5 acres, so the Project Site currently has the capacity for, at most, four residences.²¹ Yet the Project proposes to substantially increase the local population by adding 181 apartment units, along with commercial infrastructure which would encourage more vehicle travel down the unpaved dirt roads of the White Fence Farms community. Thus, there is a fair argument that the Project would create a potentially significant population impact which the City improperly dismissed without adequate analysis.

Transportation

An estimate of vehicle miles traveled (VMT) is critical not only for Air Quality and GHG impact, but also Transportation impact. The City did not take any efforts to estimate the Project’s daily VMT. (MND, p. 47.) Mitigation Measure 19, which was proposed to reduce VMT, was also improperly deferred. The amount of VMT expected to be mitigated should be analyzed during the preparation of the MND so that the mitigation measure can specify the appropriate amount to pay as a mitigation fee.

²⁰ City of Lancaster General Plan 2030, p. 1-6. [“Land use surveys conducted for the General Plan update indicate that there is enough vacant urban residential density land within the Urbanizing Area to accommodate the projected 2030 population growth shown in Table 1-2 without the need to convert additional rural residential land for urban use.”]. Available at <https://www.cityoflancasterca.org/our-city/departments-services/development-services/planning/general-plan-2030>.

²¹ $10 \text{ acres} \div 2.5 \text{ acres per lot} = 4 \text{ lots}$

The City purports to tier from the Program EIR of the Vehicle Miles Traveled Impact Fee Mitigation Program, in which a lead agency can presumably screen out of any otherwise required VMT reductions by paying \$150 per VMT. (MND, p. 48.) From the information provided in the MND, there is no evidence that this is feasible because the City is not aware of, or did not disclose, the amount of VMT that the Project would produce. The City violated CEQA by failing to estimate and discuss the potential amount of VMT that the Project could produce before deciding to mitigate it.

The statement that the Project would only have to pay \$150 per VMT also lacks supporting evidence because the VMT mitigation program allows a maximum fee of \$425 per VMT, and does not apply until the VMT already exceeds Lancaster's VMT thresholds. (PEIR VMT Mitigation Program, p. 3-5.) Thus, it is necessary to determine the amount of VMT before participating in this program.

The City claims that "[m]ixed-use developments are analyzed for VMT on their individual components," but provides no source to support this assertion. There is nothing in the VMT mitigation program that suggests mixed-use projects can be separated out into individual components as the analysis in the MND does.

Moreover, the City's determination that it could tier from the EIR for the VMT mitigation program is not supported by substantial evidence, because the MND did not discuss that the program itself would have a significant and unavoidable VMT impact:

While the proposed program would fund and help implement TDM measures and VMT-reducing projects within the City at a program level, potentially significant VMT impacts could still occur. A future development project outside of the City's VMT efficient zones could pay the required impact fee, but their required fee may not fund the full cost of what is necessary to construct/complete an identified infrastructure improvement project. Therefore, it cannot be determined with certainty whether improvements would be implemented at the time a future project's VMT impacts occur (e.g., at project opening), and whether those impacts would be mitigated to a less than significant level. Additionally, the impact fee would only apply to VMT generated above the established threshold and thus, would not be able to fully fund all the identified improvements. Given the speculative timing of when the TDM measures and VMT-reducing transportation improvements would be implemented and the fact that the mitigation program cannot fully fund all identified improvements, no feasible mitigation is available at this time to reduce impacts to less than significant levels. As such, impacts in this regard would be significant and unavoidable.

(PEIR VMT Mitigation Program, p. 1-18.)

As detailed in the excerpt above, there are many factors that would determine the appropriate action to take in accordance with Lancaster's VMT mitigation program, none of

which the City analyzed or took into consideration. Therefore, the transportation analysis was improperly deferred.

Utilities and Service Systems

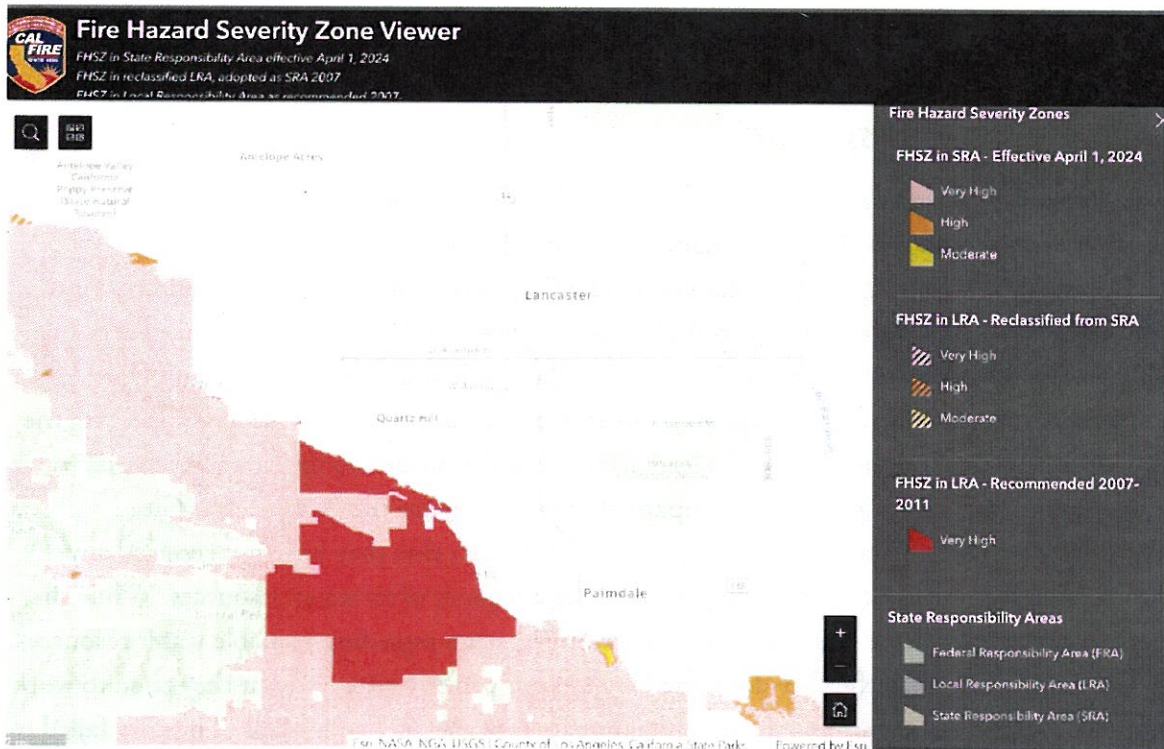
One of the significance thresholds of the utilities and service systems analysis asks whether there would be sufficient available water supplies for the Project and future development, even during multiple dry years. The City determined that there would be a less than significant impact under this threshold based on the fact that the White Fence Farms Mutual Water Company has “not indicated” that there will be any problems in supplying water through existing facilities. (MND, p. 50.) The lack of indication is not evidence supporting the City’s conclusion. And the City, as the lead agency, has the burden to determine potential water utility impact, not the private water company that would service the Project. The City improperly avoided this responsibility by relying on the fact that they have not received any information from the water company regarding the adequacy of its water resources. While the water company may have more easily accessible information regarding available water resources on the Project Site than the City does, the City did not provide evidence that they tried to work with the company to determine the potential impact to water service systems. The City failed to independently analyze the potential water needs of the Project, as required by CEQA, and therefore cannot support the claim that the project would have a less than significant impact on water resources during multiple dry years.

Wildfire

The four adopted significance thresholds for wildfire impact revolve around the overarching determination of whether the Project is “located in or near state responsibility areas or lands classified as very high fire hazard severity zones.” (MND, p. 52 [emphasis added].) The City determined that the Project would have no wildfire impact because the Project site is not in a very high fire hazard severity zone or state responsibility area. But the City did not provide any information to prove the veracity of this statement, nor did it attempt to define the scope of what “near” means in the context of a very high fire hazard severity zone (VHFHSZ).

The City failed to acknowledge that there is evidence that the Project is located near land which is classified as a very high fire hazard severity zone. The figure below shows Fire Hazard Severity Zones (FHSZ) data in the State Responsibility Area (SRA), effective April 1st 2024 in the area surrounding the Project site.²²

²² Fire Hazard Severity Zone Viewer is available at <https://experience.arcgis.com/experience/03beab8511814e79a0e4eabf0d3e7247/>



One of the cross-streets that Project site is located on, West Avenue L, as well as the California State Route 14/Antelope Valley Freeway (which is adjacent to 15th Street West, the other cross-street of the Project Site), is apparent on this map. While the Project site itself is in a Local Responsibility Area, there is a very large VFHSZ immediately to the southwest of Lancaster. As many California residents are aware, wildfires can travel extensive distances and have been known to cross major highways. This map shows that the Project Site is likely within 10 miles of the nearest VFHSZ and on the same side of the freeway. The City failed to acknowledge the proximity of the nearest VFHSZ in its determination that there would be no wildfire impact.

By constructing a mixed-use development, the Project will undoubtedly add to risk of wildfire, both within the Project Site and in areas adjacent to the Project Site, but the City did not reach any of the significance thresholds within the overarching preliminary wildfire threshold because it incorrectly determined that the Project is not near a VFHSZ.

Cumulative Impacts

In the mandatory significance findings portion of the MND, the lead agency asks whether the project would cause substantial adverse effects on human beings, either directly or indirectly. The above comments present a fair argument that it could.

Furthermore, the City is required to adequately address cumulative impacts, which it summarily dismissed. The chosen significance threshold was whether the project has cumulatively considerable impacts, which are "that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (MND, p. 53.)

The MND identified eleven other present and reasonably foreseeable projects in the surrounding area. However, the City failed to identify any past projects in its cumulative analysis. Of particular concern, the City did not acknowledge the cumulative impact of development, past, present, or future, on Joshua Trees in the region.

Lastly, GHG impacts are inherently cumulative, and our comments regarding the MND's inadequacy in analyzing the GHG impact and the presentation of evidence that the Project would have a significant GHG impact provides a fair argument that the cumulative impact of the Project could be significant.

The City Should Have Done an EIR

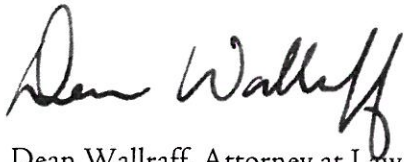
When a fair argument is presented that a project may have a significant effect on the environment, CEQA requires a lead agency to prepare an EIR, regardless if there is substantial evidence supporting that the project will not have a significant effect. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68). Accordingly, the City should prepare an EIR because the above comments demonstrate a fair argument that the Project may have a significant effect on the environment in many impact categories: aesthetics; air quality; biological resources; energy; geology and soils; GHGs; hydrology and water quality; land use and planning; population and housing; transportation; utilities and service systems; wildfire; and cumulative impacts.

Conclusion

For the reasons given in this letter, the MND is not in conformance with CEQA requirements. Notably, the MND failed as an informational document for decision makers and the public, the significance analysis was inadequate, proposed mitigation measures were inadequate, and the City should have concluded that the Project would contribute to a significant environmental impact. In conclusion, City should not have prepared an MND for this Project, but rather should have concluded that there was a likelihood of significant impact on GHG emissions, which would then require an EIR with full analysis in accordance with CEQA guidelines.

Please put Advocates for the Environment on the list of interested parties to receive updates about the progress of this potential project approval. We make this request under Public Resources Code, section 21092.2.

Sincerely,

A handwritten signature in black ink that reads "Dean Wallraff". The signature is fluid and cursive, with the first name "Dean" and last name "Wallraff" clearly distinguishable.

Dean Wallraff, Attorney at Law
Executive Director, Advocates for the Environment