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July 3, 2023

Steve Esselman, Planning Director
City of Shafter
336 Pacific Avenue
Shafter, California 93263
sesselman@shafter.com

Subject: City of Shafter 2023-2031 Housing Element Update EIR (Project)
Initial Study/Mitigated Negative Declaration
SCH No. 2023060062

Dear Steve Esselman:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Shafter for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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, CDFW appreciates 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 Fish and Game Code.

CDFW 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, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (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

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

projects and related activities that have the potential to adversely affect 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. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Shafter

Objective: The City of Shafter Housing Element (HEU) is a State-required General Plan Element. The intent of the Housing Program is to ensure the housing needs of all economic segments of the community will be met through December 31, 2031. The Housing Program includes Goals, Policies, and actions that the City will undertake to meet its housing needs, identification of funding sources, responsible entities, and time frames for implementation. The Project identifies strategies and programs that focus on the following:

- Conserving and improving existing affordable housing;
- Providing adequate housing sites;
- Assisting in development of affordable housing;
- Removing governmental and other constraints to facilitate housing development; and,
- Promoting equal housing opportunities.

The HEU provides for five primary sites that are currently zoned for residential use and could accommodate 9,365 total units (37 very-low income; 125 low-income; 5,023 moderate income; and 4,179 above-moderate income). Also, the HEU indicates that other available properties within Shafter that could be re-zoned for residential use could

accommodate an additional 19,135 residential units (949 very-low income; 3,792 low-income; 7,113 moderate income; and 7,281 above-moderate income).

Location: The Project is the City of Shafter, located in the San Joaquin Valley, within Kern County, approximately 18 miles west-northwest of the City of Bakersfield.

Timeframe: 2023 through December 31, 2031.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Shafter in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

There may be special-status resources present in and adjacent to the Project site. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned with potential impacts to special-status species including, but not limited to, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened tricolor blackbird (*Agelaius tricolor*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State candidate-listed endangered Crotch bumble bee (*Bombus crotchii*), and the State species of special concern burrowing owl (*Athene cunicularia*).

San Joaquin Kit Fox

The California Natural Diversity Database (CNDDB) documents a San Joaquin kit fox (SJKF) record within the Project site (CDFW 2023a). Their populations are known to fluctuate over years and presence or absence in any one year does not necessarily reduce the potential for kit fox to occur on a site. It is important to note that SJKF may be attracted to the Project area due to the type and level of activity and the loose, friable soils that are created as a result of intensive ground disturbance. If plowed fields are left fallow for any length of time, SJKF can quickly move in and utilize these areas for both denning and foraging. CDFW recommends following the USFWS's "Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (2011) survey protocols and that they be conducted as part of the biological technical studies conducted as part of the CEQA documents for future housing projects. If this species is detected during surveys, consultation with the CDFW is warranted to discuss how to implement the project and avoid take, or if avoidance is not feasible, to acquire a State Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) necessary to comply with CESA. CDFW advises that avoidance, minimization, and mitigation measures for SJKF be fully addressed in the MND.

Swainson's Hawk

Swainson's hawk (SWHA) exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young).

CDFW agrees with the MND that housing development activities will be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends protocol surveys be conducted by a qualified biologist following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) during the survey season prior to project construction. CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If an active SWHA nest is detected during surveys and a 0.5-mile buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Tricolored Blackbird

Tricolor blackbird (TRBL) have the potential to nest within and adjacent to the Project site. Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

TRBL are known to nest in alfalfa, wheat, and other low agricultural crop fields. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014). CDFW recommends the following avoidance and minimization measures be incorporated into the MND for this Project.

CDFW agrees with the MND that housing development activities will be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a survey for suitable habitat be conducted by a qualified biologist with knowledge of TRBL natural history and behaviors as part of the biological technical studies conducted in support of the CEQA document for each housing project. If suitable habitat is present, CDFW recommends a qualified biologist conduct focused surveys for nesting TRBL no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no disturbance buffer around the colony in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time. For this reason, CDFW also recommends conducting pre-activity surveys of an identified nesting colony within 10 days prior to the start of ground or vegetation disturbing activities to reassess the colony's areal extent. If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

Crotch Bumble Bee

Crotch Bumble Bee (CBB) have the potential to occur within the Project site. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with project activities have the potential to significantly impact local CBB populations.

CDFW agrees with the MND that for future housing development facilitated by the HEU, surveys will be conducted on sites that contain the presence of any sensitive biological resources. CDFW recommends that a habitat assessment be conducted for suitable

CBB habitat, CBB nesting habitat, and CBB foraging resources, and that surveys follow CDFW's *Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species* (CDFW 2023b). If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement project activities and avoid take. Any detection of CBB prior to or during project implementation warrants consultation with CDFW to discuss how to avoid take.

Burrowing Owl

Burrowing owl (BUOW) have the potential to be present on and adjacent to the Project site. It is possible project activities could impact this species. BUOW have the potential to be year-round residents. Dispersing juveniles, migrants, transients or new colonizers and can utilize the project site year-round. Therefore, CDFW recommends the survey methodology described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012) be followed before beginning ground disturbing activities. In the event that BUOW are found, CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Failure to implement the recommended buffer zones could cause adult BUOW to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure, in violation of Fish and Game Code and the Migratory Bird Treaty Act.

Nesting birds

CDFW agrees with the MND that housing development activities will avoid the bird breeding season. If ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the project proponent is responsible for ensuring that implementation of the project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above. In the event that ground-disturbing activities were to occur during the bird breeding season, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance

to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the project site to identify nests and determine their status. A sufficient area means any area potentially affected by the project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

California Natural Diversity Database

Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area.

Lake and Streambed Alteration

Future residential development may be subject to CDFW's regulatory authority pursuant Fish and Game Code Section 1600 et seq. Fish and Game Code section 1602 requires the project proponent to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or

intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or by electronic mail at R4LSA@wildlife.ca.gov.

Federally Listed Species

CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

CDFW appreciates the opportunity to comment on the Project to assist the City of Shafter in identifying and mitigating the Project's impacts on biological resources. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Krista Tomlinson
12950B95267A4F5...
Krista Tomlinson for Julie A. Vance
Regional Manager

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Attachment 1

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Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PROJECT: City of Shafter 2023-2031 Housing Element Update EIR

SCH No.: 2023060062

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Before Disturbing Soil or Vegetation	
Mitigation Measure: SJKF	
SJKF take authorization	
Mitigation Measure: SWHA	
SWHA surveys	
SWHA take authorization	
Mitigation Measure: TRBL	
TRBL surveys	
TRBL consultation with CDFW	
Mitigation Measure: CBB	
CBB survey/habitat assessment	
CBB consultation with CDFW	
Mitigation Measure: BUOW	
BUOW surveys	
Before Impacting the Bed, Bank, or Channel of any Stream or River	
Mitigation Measure: Notification to CDFW's Lake and Streambed Alteration Program	
During Construction	
Mitigation Measure: SWHA	
SWHA avoidance buffer	
Mitigation Measure: TRBL	
TRBL avoidance buffer	
Mitigation Measure: BUOW	
BUOW avoidance buffer	