

Shady View Residential Project

Addendum 1 to the

Final Environmental Impact Report

SCH NO. 2021060576



LEAD AGENCY:

City of Chino Hills

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1.0 INTRODUCTION

1.1 Description of Approved Project

The Shady View Residential Project proposes the development of a single-family residential subdivision (Project). The proposed subdivision would consist of 159 single-family residential homes, a community recreation center, private interior streets, debris basins, utility infrastructure, and other associated improvements. Additionally, the Project includes approximately 80.8 acres of homeowners' association-maintained open space. The proposed Project is designed to be consistent with the City of Chino Hills General Plan and Chino Hills Zoning Code. The existing General Plan land use designation is split between two residential land uses, Agriculture Ranch and Low Density Residential. In addition, the zoning for the property is split between two residential zoning districts, R-S Low Density Residential and R-A Agriculture/Ranches. The location of the split occurs at the same location for both land use and zoning. As proposed, all residential development would occur in the Low-Density Residential land use designated, R-S zoned portion of the site. The Project consists of four main components: (1) residential development; (2) oil tank removal and construction; (3) amenities and open space; and (4) access, circulation, and parking.

1.2 Purpose of Addendum 1

The Shady View Residential Project Final Environmental Impact Report (SCH No. 2021060576), dated August 2022 (EIR), was adopted and certified by the City of Chino Hills in September 2022. Field surveys conducted for the EIR by Helix Environmental noted that Crotch's bumblebees were not incidentally observed during field surveys conducted in 2020 or 2021. Subsequently, and in accordance with the Project's adopted Mitigation Monitoring and Reporting Program (MMRP), mitigation measure *MM-BIO-5 Jurisdictional Resources*, the Project Applicant submitted a regulatory permit application for a Streambed Alteration Agreement (SAA) to the California Department of Fish and Wildlife (CDFW) for mitigating impacts to jurisdictional Waters of the State. CDFW issued the SAA (reference number EPIMS-SBR-31909-R6) on March 8, 2023 (Attachment A). The SAA contains 18 *Avoidance and Minimization Measures* in Section 2.0, one of which requires preconstruction surveys for Crotch's bumble bee (*B. crotchii* or "Bee"), and if detected during the surveys, requires a CDFW Incidental Take Permit (ITP). This measure 2.9 is excerpted and provided below for reference:

2.9 Crotch's Bumble Bee. The Designated Biologist(s) shall conduct focused surveys within one year prior to vegetation removal and/or grading for the presence/absence of Crotch's bumble bee. Surveys shall be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1, by an approved Designated Biologist, familiar with Crotch's bumble bee behavior and life history. Surveys shall be conducted within the Project site and areas adjacent to the Project site where suitable habitat exists. Survey results including negative findings shall be submitted to CDFW 30 days prior to Project-related vegetation removal and/or ground-disturbing activities. If the species is identified onsite, Permittee shall apply for an ITP and obtain "take" coverage prior to the initiation of project activities.

Pursuant to the SAA requirement 2.9, two Bee surveys were conducted in June, 2023. Bees were detected on June 5 and June 18 and the Project site was, therefore, determined occupied by the Bee (Figure 1, *Crotch's Bumble Bee Sightings Map*).

Preliminary results of the Bee surveys were submitted to CDFW on June 10, 2023. An ITP application was also prepared and submitted to CDFW on June 22, 2023. CDFW reviewed the application and issued an “incomplete” application status letter on July 13, 2023, requesting additional information (Attachment B). Within the status letter, CDFW requested a CEQA analysis in connection with the ITP application, and based on CEQA Guidelines 15162, the City, as lead agency, has prepared this Addendum 1 to the previously-certified EIR for the proposed Project. No changes to the Description of the Approved Project provided above in Section 1.1 have since occurred that deviate from the description provided in the certified EIR; therefore, this Addendum 1 focuses solely on the biological impacts and mitigation related to the Bee.

1.3 Need for Addendum 1

The California Natural Diversity Database (CNDDDB) tracks 6 bumble bees (*Bombus sp.*) that are identified as species of greatest conservation need. Four of these bumble bees, including the Crotch’s bumble bee (*B. crotchii* or “Bee”), were petitioned to the State of California in 2018 and the Fish and Game Commission advanced them to a Candidate Endangered species under the CESA in June 2019. The Crotch’s bumble bee has a historic range that covers the Project site. The advanced candidacy of the Bee was challenged in court, and in November 2020 the Superior Court ruled that insects are not eligible for listing under CESA. It was at this time the Project’s Draft EIR was under preparation and the City made the determination to remove discussion of the Bee from the Project’s Draft EIR based on the ruling made in *Almond Alliance et al. v. California Fish and Game Commission*. The Draft EIR was circulated for public review and comment between May 27, 2022 and July 11, 2022. A subsequent legal challenge of CESA’s definition of a fish as “a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals” was eventually overruled on May 31, 2022 after the Draft EIR public circulation period had started, because (according to the ruling) the explicit intent was for all invertebrates (therefore including insects) to be qualified for protection under this legal definition. No comments were received on the Draft EIR related to the Bee and the Final EIR was certified in September 2022.

1.4 Basis for an Addendum

CEQA Guidelines Section 15164 allows for the preparation of an Addendum to a certified EIR, “if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent or supplemental EIR have occurred.” CEQA Guidelines Section 15162 identifies the following conditions that would require preparation of a subsequent EIR described in CEQA Guidelines Section 15162 or preparation of a supplemental EIR described in CEQA Guidelines Section 15163:

- 1) Substantial changes in the project are proposed which require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time of EIR certification, shows any of the following:
- A. The project will have one or more significant effects not discussed in the EIR and will result in impacts substantially more severe than those disclosed in the EIR.
 - B. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measure or alternative;
 - C. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - D. Mitigation measures or alternatives that are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measure or alternative.

The Addendum need not be circulated for public review (CEQA Guidelines Section 15164[c]); however, an Addendum must be considered by the decision-making body prior to making a decision on the project (CEQA Guidelines Section 15164[d]).

This Addendum 1 documents that the environmental analysis, impacts, and mitigation requirements identified in the previously certified EIR remain substantively unchanged despite the addition of avoidance/minimization measures for the Bee, resulting from implementation of the Project's MMRP mitigation measure *MM-BIO-5 Jurisdictional Resources* and subsequent conditions placed on the Project by the CDFW SAA and CDFW ITP described herein. It should also be noted that the Project is already providing approximately 45 acres of enhanced and preserved Coastal Sage Scrub (CSS) habitat to mitigate impacts to California gnatcatcher. Protection of this CSS habitat would also help fulfill requirements of the ITP since CSS habitat supports the Bee. This Addendum also supports the finding that compliance with the proposed Project's regulatory permits does not raise any substantial issues requiring preparation of a subsequent EIR or supplemental EIR.

2.0 ENVIRONMENTAL ANALYSIS

2.1 Scope of Analysis

The focus of this analysis is to augment the certified EIR's Section 4.3 Biological Resources discussion, resulting from implementation of the Project's MMRP mitigation measure *MM-BIO-5 Jurisdictional Resources*, and from the extension of the Project's environmental commitments resulting from the subsequent CDFW-issued SAA and ITP.

As previously discussed, no changes to the Project Description have occurred since the EIR was certified; therefore, the analysis focuses on augmenting discussion related only to the Bee and does not require augmented discussion or analysis related to other environmental issue areas or alternatives presented in the certified EIR.

Specifically, the Bee discussion is relevant to the following significance threshold questions found in the EIR Section 4.3:

Threshold 1: Would the project have a substantial adverse 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 the CDFW or USFWS?

Threshold 4: Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Pertinent documents relating to this Addendum have been cited in accordance with CEQA Guidelines Section 15150. The Addendum incorporates by reference Certified EIR SCH No. 2021060576. The Certified EIR is available for review at City of Chino Hills Community Development Department 14000 City Center Drive Chino Hills, CA 91709. The certified EIR is also available online through the CEQAnet database at the following address: <https://ceqanet.opr.ca.gov/Project/2021060576>.

2.2 Crotch's Bumble Bee (Bee) Characteristics

The Bee is characterized as a short- or medium- tongue length species. Males are generally present from May to September with their peak occurring in July. Workers of this species are active from April to August and queen bees are active for only two months from March until May; the peak of worker activity is between May and June, while queens reach maximum activity in April.

The Bee lives primarily in California in the United States. The Bee is extant but uncommon in Baja California, Mexico, and Nevada. Most observations of this species occur in southern California in coastal areas. The Bee inhabits grassland and scrub areas, requiring a hotter and drier environment than other bumble bee species, and can only tolerate a very narrow range of climatic conditions. The Bee nests underground, often in abandoned rodent dens and it is a nonmigratory species of bumble bee.

The Bee is characterized as a dietary generalist due to the wide range of host plants visited. Important food plants include milkweeds, dustymaidens, lupines, medics, phacelias, and sages. The Bee also feeds on snapdragons, Clarkia, poppies, and wild buckwheats. Milkweed is a favorite nectar source of the Bee. Pursuant to the Bee survey results, the entomologist observed the Bee foraging

in *Salvia mellifera*, *Astragalus*, *Eriodictyon californicum*, *Lathyrus vestitus*, *Vicia sativa* (an exotic weed), and *Acemespon glaber*. A couple of other species that have potential importance but seem relatively rarely used are *Eriogonum fasciculatum* (but this may be more important in summer and late summer) and *Salvia apiana*. *Salvia carduaceae*, *Salvia columbaria*, and *Phacelia distans* may also be beneficial to the Bee.

According to the Xerces Society for Invertebrate Conservation¹, agricultural intensification in California's northern Central Valley and rapid urbanization in the southern Central Valley are threats that may have impacted the Bee, since this species was historically common in the Central Valley but now appears to be absent from much of its historic range, especially in the central part of its range. Note, however, that in the more northern parts of this species range, this species has been detected in agricultural landscapes in Yolo County and Contra Costa County in recent years. Climate change, specifically increasing aridity, is an additional threat because this species has a very narrow climatic specialization compared to most bumble bees. Bumble bees, as a whole, are threatened by a number of additional factors including pesticide use, pathogens from managed pollinators, and competition with non-native bees. Reduced genetic diversity resulting from any of these threats can be particularly concerning for bumble bees, since their method of sex-determination can be disrupted by inbreeding, and since genetic diversity already tends to be low in this group due to the colonial life cycle (i.e., even large numbers of bumble bees may represent only one or a few queens).

2.3 Environmental Impact Analysis

Threshold 1: Would the project have a substantial adverse 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 the CDFW or USFWS?

Project activities and their resulting impacts are expected to result in the incidental “take” of Bee individuals. The incidental take of individuals could occur during vegetation removal, grading, filling, excavation, operation and staging of vehicles and heavy equipment, and installation and/or construction of Project facilities.

Incidental take of individuals could occur in the form of mortality (“kill”) as a result of crushing of individuals, injury to individuals, soil disturbance, and compaction due to installation and construction of Project facilities. The areas where authorized take of the Bee is expected to occur include those identified as Project Site Impact Area on Figure 2, *Crotch's Bumble Bee Sightings Map*.

The Project is expected to cause the permanent loss of up to 85 acres, of which 26.82 is coastal sage scrub (CSS) habitat and potentially suitable habitat for the Bee. Impacts of the authorized taking also include adverse impacts to the Bee related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include the long-term effects due to decreased habitat.

While the Project would disturb some habitat for the Bee, a large portion of the Project site would be preserved and revegetation enhanced with CSS, with a focus on the key nectar sources (i.e., plant species) described above. This approximately 45-acre area would be managed in perpetuity and

¹ Source: Xerces Society for Invertebrate Conservation. Crotch Bumble Bee. Accessed July 17, 2023 at <https://www.iucnredlist.org/species/44937582/46440211>

would be protected by a conservation easement. Regional build-out of development would continue to have adverse impacts to the species; however, with confirmation that the Soquel Canyon Mitigation Bank is occupied by this species, along with the likely occupation of the adjacent open space and Chino Hills State Park, the population in and around Chino Hills is not anticipated to be extirpated because much of this land is not zoned for development.

The Bee would be the only “Covered Species” for the purposes of the Project’s CDFW-issued Incidental Take Permit (ITP). While the Bee was not thought to be present on site at the time of the preparation of the CEQA document, California coastal gnatcatchers (CAGN) inhabit a similar habitat. CSS is one of the priority nectar sources for the Bee; therefore, the CEQA document mitigation for the CAGN is identical to the mitigation for the Bee. With implementation of the certified EIR’s mitigation measure BIO-4, part (1.) described below, impacts would be considered less than significant. In addition, the Project is subject to the ITP process and environmental commitments required by the ITP, where CDFW is the applicable State agency with legal oversight over implementation of the CESA. The certified EIR’s mitigation measure BIO-4, part (1.) is included below for reference:

BIO-4 Coastal California Gnatcatcher. Due to presence of CAGN and suitable habitat within the study area, the following measures shall be implemented to minimize and avoid potential direct impacts:

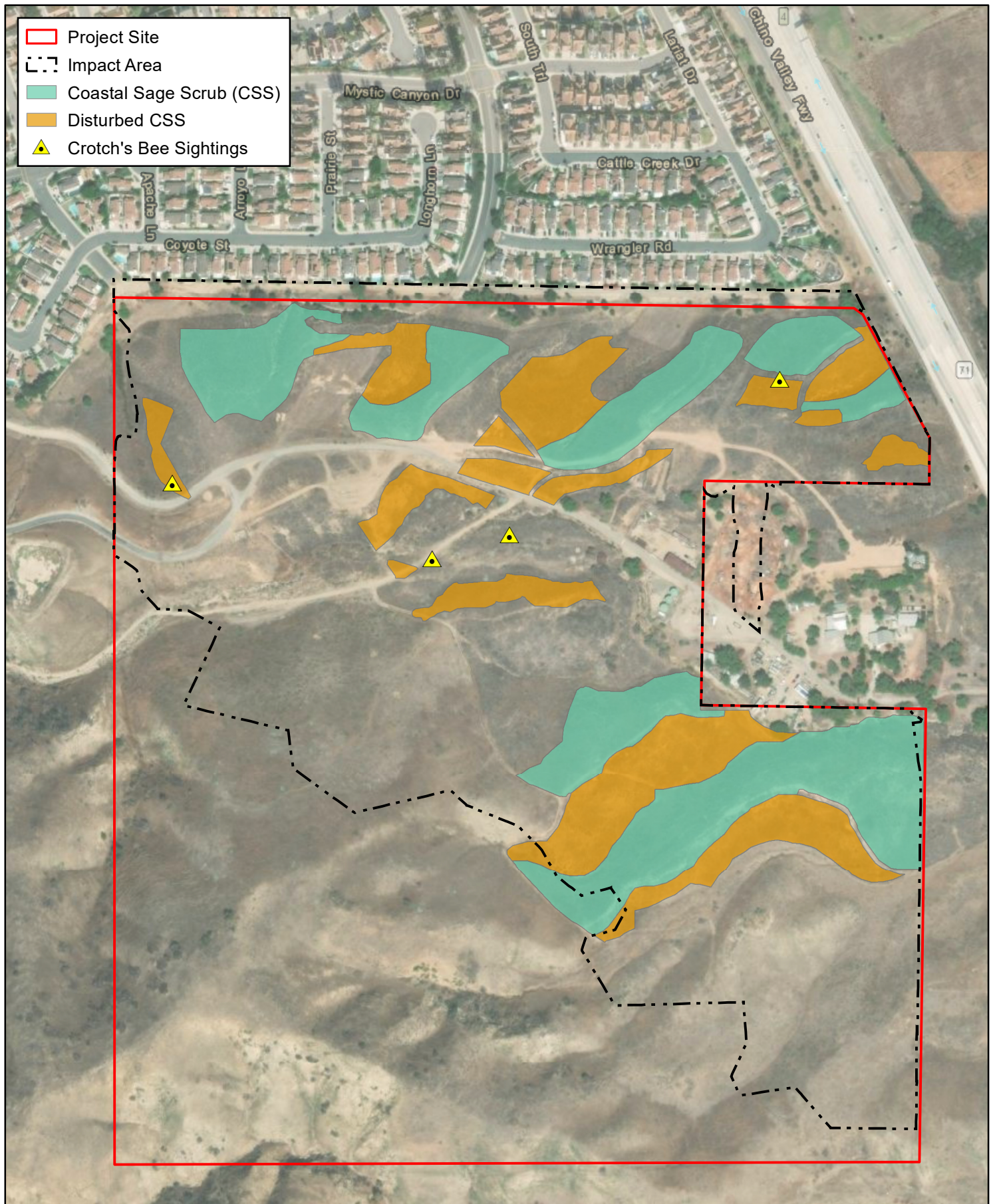
1. Prior to issuance of a grading permit, it shall be demonstrated that FESA consultation with USFWS regarding the project’s effects to CAGN has occurred and that the USFWS has authorized such take through an incidental take statement or incidental take permit, as applicable. Compensatory mitigation for permanent direct impacts to 25.65 acres of suitable CAGN habitat identified in this report shall be offset through compensatory mitigation which may include, but is not necessarily limited to, on-site or offsite California sage scrub preservation, enhancement, restoration, and/or creation at a ratio of no less than 1:1. However, if the USFWS issues a biological opinion or incidental take permit for the project that covers CAGN, that document will supersede any measures and mitigation ratios provided in this report. Mitigation for the project’s effects to CAGN shall be determined by USFWS in accordance with the FESA consultation process and the biological opinion or incidental take permit that is issued by USFWS for the project.

Threshold 4: Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

As previously noted above in Section 2.2, the Bee is a non-migratory species of bumble bee; therefore, no impacts are anticipated with respect to migratory wildlife species. In addition, the Project would be enhancing and protecting in perpetuity the approximately 45-acre mitigation site with suitable CSS Bee habitat. Furthermore, with confirmation that the Soquel Canyon Mitigation Bank is occupied by this species, along with the likely occupation of the adjacent open space and Chino Hills State Park, the population in and around Chino Hills is not anticipated to be extirpated because much of this land is not zoned for development.

3.0 FINDINGS AND CONCLUSION

1. The Project description has not changed from what was proposed and described in the certified EIR.
2. The Project description has not changed, and the environmental setting is the same. The bee was analyzed and removed from the Draft EIR during preparation of the document based on the Bee's legal status at that time, coupled with the fact that no Bees were found on the Project site at that time. The City considers protections for the Bee as an extension of permit compliance, not a "substantial" change in circumstances.
3. As previously noted, discussion of the Bee was removed from the Draft EIR based on current listing status at the time. Mitigation for the Bee would be fulfilled in the same manner that the coastal California Gnatcatcher is mitigated as described in the CEQA document and pursuant to the Project's SAA and subsequent ITP. The Project also includes an approximately 45-acre coastal sage scrub (CSS) enhancement and conservation area for Gnatcatcher, which will also serve the Bee as suitable Bee habitat.
4. A CEQA Addendum is the appropriate environmental documentation. A subsequent EIR or supplemental EIR is not required since none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent or supplemental EIR have occurred.



Attachment A

CDFW Streambed Alteration Agreement (EPIMS-SBR-31909-R6)

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
3602 INLAND EMPIRE BOULEVARD, SUITE C-220
ONTARIO, CA 91764



STREAMBED ALTERATION AGREEMENT
EPIMS-SBR-31909-R6
Chino Creek

TH SHADY VIEW, LLC
SHADY VIEW RESIDENTIAL PROJECT - TENTATIVE TRACT NO. 82126 PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and TH Shady View, LLC (Permittee) as represented by Maggi Kibbee.

RECITALS

WHEREAS, pursuant to Fish and Game Code section 1602, Permittee notified CDFW on July 8, 2022, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to Fish and Game Code section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located within Chino Creek, a tributary to the Santa Ana River, in the City of Chino Hills, in the County of San Bernardino, State of California; Latitude 33.922514, Longitude -117.660541 and Latitude 33.923807, Longitude -117.663113; Assessor's Parcel Number [APN] 1057-261-06-0000. The Project site occurs at the cross section of Shady View Drive and Wrangler Road, Chino Hills.

PROJECT DESCRIPTION

The Project is limited to grading and filling of several streambeds to accommodate the construction of 159 single-family residential homes, a community recreation center, private interior streets, debris basins, utility infrastructure, and other associated improvements on approximately 32.2 acres in the northern and eastern portions of the Project site. Additionally, the Project includes approximately 80.8 acres of homeowners-

association-maintained open space and the relocation of an oil storage facility within the Project development. Within the 129.80-acre Project site, approximately 48.23 acres will not be impacted and will be avoided by the Project. An approximately 21.86-acre fuel modification zone will be installed around the residential development. Approximately 0.84 acre of off-site areas located adjacent to the Project boundary will be impacted to accommodate road improvements and cleanup from past oil production-related contamination.

PROJECT IMPACTS

Existing fish or wildlife resources the Project could substantially adversely affect include:

REPTILES: Southern California legless lizard (*Anniella stebbinsi*), red diamond rattlesnake (*Crotalus ruber*), coast horned lizard (*Phrynosoma blainvillii*), **BIRDS:** burrowing owl (*Athene cunicularia*), coastal California gnatcatcher (*Polioptila californica californica*), Least Bell's vireo (*Vireo bellii pusillus*), long-eared owl (*Asio otus*), grasshopper sparrow (*Ammodramus savannarum*), Swainson's hawk (*Buteo swainsoni*), white-tailed kite (*Elanus leucurus*), golden eagle (*Aquila chrysaetos*), **MAMMALS:** western mastiff bat (*Eumops perotis californicus*), western yellow bat (*Lasiurus xanthinus*), pocketed free-tailed bat (*Nyctinomops femorasaccus*), **PLANTS:** Braunton's milk-vetch (*Astragalus brauntonii*), intermediate mariposa lily (*Calochortus weedii* var. *intermedius*), many-stemmed dudleya (*Dudleya multicaulis*), white-rabbit tobacco (*Pseudognaphalium leucocephalum*), **INSECTS:** Crotch's bumble bee (*Bombus crotchii*).

The adverse effects the Project could have on the fish or wildlife resources identified above include grading and permanent loss of streambed and bank functions and values such as sediment and flow transport; loss of nesting, roosting, and foraging habitat; loss of burrowing habitat for small and medium-sized mammals, reptiles, and birds; and the loss of habitat coverage, and composition. Project activities described above are anticipated to permanently impact 0.89 acre of Fish and Game Code section 1602 resources.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the Project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the Project at the Project site on behalf of

Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.

- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the Project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the Project site with at least two business days advanced notice provided to the Permittee, to allow for access and safety arrangements, to verify compliance with the Agreement.
- 1.5 Additional Project Impacts. Permittee shall submit to CDFW a request to amend this Agreement if any additional Projects or impacts subject to Fish and Game Code section 1602 not identified in this Agreement are anticipated. No additional impacts subject to Fish and Game Code section 1602 are authorized unless the Projects and/or impacts are expressly authorized by CDFW by amendment to this Agreement.
- 1.6 Take of Listed Species. The issuance of this Agreement does not authorize the take, incidental or otherwise, of any state or federally listed threatened, endangered, candidate or fully protected species. Take of any California Endangered Species Act (CESA) listed species is prohibited except as authorized by state law (Fish and G. Code, §§ 2080 & 2085). Consequently, if a Project, including Project construction or any Project-related activity during the life of the Project, may result in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit (ITP) or a Natural Community Conservation Plan (NCCP) (Fish & G. Code, §§ 2080.1 & 2081).
- 1.7 Take of Nesting Birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 Designated Biologist. Permittee shall submit to CDFW for review the name, contact information, and qualifications of each biologist, botanist, or other specialist

(Designated Biologist(s)) proposed to perform surveys and/or conduct monitoring activities addressed by this Agreement. Permittee shall specify within these submittals which activities each Designated Biologist is being considered for, and clearly identify the qualifications and experience they possess to support the assignment. Permittee shall submit the aforementioned information at least 30 days before commencement of Project activities addressed by this Agreement. Permittee shall notify CDFW in advance and in writing if a Designated Biologist must be changed to a person not previously proposed for the Project. If CDFW does not respond to the request with a rejection or approval of the Designated Biologist(s) within 30 days from the request, the Project can move forward with those provided.

- 2.2 Qualifications of Designated Biologist(s). Permittee shall ensure that each Designated Biologist is knowledgeable and experienced in the identification, life history, behavior, and habitat requirements of species with potential to be impacted by the Project. Permittee shall also ensure that handling of non-listed fish, wildlife, or plant species is conducted only by Designated Biologists approved by CDFW in writing. Handling of state-listed species will require CESA authorization.
- 2.3 Responsibility of Designated Biologist(s). The Designated Biologist(s) shall be responsible for monitoring activities addressed by this Agreement, including, but not limited to all activities that result in clearing, grading, excavation, and/or other ground-disturbing activities. To ensure compliance with the measures of this Agreement, the Designated Biologist(s) shall confirm and monitor the limits of Project activities addressed by this Agreement.
- 2.4 Authority of Designated Biologist. To ensure compliance with the measures of this Agreement, the Designated Biologist(s) shall immediately halt any activity that does not comply with this Agreement, and/or order any reasonable measure to avoid the violation of any measure of this Agreement. The Designated Biologist(s) shall halt construction activities covered by this Agreement if the Project has the potential to adversely impact any special-status species beyond the levels identified in this Agreement and notify CDFW within 24 hours. This Agreement does not authorize "take" of listed species.
- 2.5 Nesting Birds. Permittee shall ensure that impacts to nesting birds are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures. Permittee shall designate a biologist (Designated Biologist(s) experienced in: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.
 - 2.5.1 Surveys shall be conducted by the Designated Biologist(s) at the appropriate time of day/night, during appropriate weather conditions, no more than 3

days prior to the initiation of Project activities addressed by this Agreement. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If a nest is suspected, but not confirmed, the Designated Biologist(s) shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. The Designated Biologist(s) shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed, but thought to be inactive, the Designated Biologist(s) shall monitor the nest for 1 hour (4 hours for raptors) prior to approaching the nest to determine status. The Designated Biologist(s) shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate. Results of pre-construction surveys shall be provided to CDFW per Measure 4.1.

2.5.2 When an active nest is confirmed, the Designated Biologist(s) shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the Designated Biologist(s) shall document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the Designated Biologist(s) may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The Designated Biologist(s) shall monitor the nest at the onset of Project activities addressed by this Agreement, and at the onset of any changes in Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist(s) determines that Project activities may be causing an adverse reaction, the Designated Biologist(s) shall adjust the buffer accordingly.

2.5.3 If active nesting activities are observed during the preconstruction surveys, then the Designated Biologist(s) shall be onsite daily to monitor all existing

nests when work is adjacent to the nest buffer, the efficacy of established buffers, and to document any new nesting occurrences. The Designated Biologist(s) shall document the status of all existing nests, including the stage of reproduction and the expected fledge date. If a nest is suspected to have been abandoned or failed, CDFW recommends the Designated Biologist(s) monitor the nest for a minimum of 1 hour (4 hours for raptors), uninterrupted, during favorable field conditions. If no activity is observed during that time, the Designated Biologist(s) may approach the nest to assess the status.

- 2.5.4 Permittee, under the direction of the Designated Biologist(s), may also take steps to discourage nesting on the Project site, including moving equipment and materials daily, covering material with tarps or fabric, and securing all open pipes and construction materials. The Designated Biologist(s) shall ensure that none of the materials used pose an entanglement risk to birds or other species.
- 2.5.5 The Designated Biologist(s) shall be responsible for providing summary reports, as specified in Measure 4.2 to CDFW no less than once weekly regarding the nesting species identified onsite, discovery of any of new nests, the status/outcome of any previously identified nest, buffer distances established for each nest, and any adjustments made to established buffers. If the Project results in the abandonment of, or damage to a nest, Permittee shall notify CDFW within 24 hours.
- 2.6 Burrowing Owl. Permittee shall ensure that impacts to burrowing owls and take of burrowing owls are avoided through the implementation of preconstruction surveys and ongoing monitoring. If impacts to burrowing habitat cannot be avoided, then Permittee shall implement the required minimization and mitigation measures.
- 2.6.1 Burrowing Owl Pre-Construction Inspection. Because burrowing owl habitat was found onsite, Permittee shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity **within three (3) days prior** to any site-preparation activities. Evidence of owl activity may include presence of owls themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or other “ornamentation,” feathers, prey remains, etc. If it is evident that the burrows are actively being used, Permittee shall not commence activities until no sign is present that the burrows are being used by adult or juvenile owls or following CDFW approval of a Burrowing Owl Plan as described in Measure 2.6.2. CDFW shall be notified in writing of detection of active burrows **within three (3) days**.
- 2.6.2 Burrowing Owl Plan. If burrowing owls are detected on the Project site, the Permittee shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval **at least 30 days prior to** initiation of Project activities. If burrowing owls are detected after Project activities have

been initiated, a Burrowing Owl Plan shall be submitted to CDFW for review and approval **within two weeks of detection** and no Project activity shall continue within 1000 feet of the burrowing owls. Project activities shall not occur within 1000 feet of an active burrow until CDFW approves the Burrowing Owl Plan. The Burrowing Owl Plan shall include 1) impact assessment that details the number and location of occupied burrow sites, and acres of burrowing owl habitat with a qualitative description of the habitat vegetation characteristics that will be impacted; 2) if avoidance of impacts is proposed details on avoidance actions and monitoring such on proposed buffers, visual barriers and other actions; 3) site monitoring to be conducted prior to, during, and after any exclusion of burrowing owls from their burrows sufficient to ensure take is avoided, daily monitoring with cameras and direct observation for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season, and process to document any excluded burrowing owls are using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight). If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method, may be a potentially significant impact under CEQA, and has the possibility to result in take which is not authorized by this Agreement. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.

2.6.3 Burrowing Owls Observed During Construction. If burrowing owls are observed within Project Site(s) during Project implementation and construction, Permittee shall **notify CDFW immediately** in writing at the address below under Contact Information (reference SAA# EPIMS-SBR-31909-R6).

2.7 Coastal California Gnatcatcher. Permittee shall designate a coastal California gnatcatcher (CAGN) biologist (Designated Biologist) that is knowledgeable about the species, including its natural history, habitat requirements, seasonal movements and range, to survey and monitor for CAGN prior to Project activities. The Designated Biologist shall complete necessary surveys, impact assessments, and associated reports within all locations subject to Project site activities following

the protocols provided within the USFWS *Survey Guidelines for the Coastal California Gnatcatcher* (USFWS, July 1997). If CAGN are identified onsite, Permittee shall develop and submit to CDFW for review and approval, a plan to avoid, minimize, and/or mitigate impacts to CAGN. Permittee may propose to mitigate losses to CAGN habitat through the mitigation identified for stream impacts if CAGN-occupied exist on the mitigation lands.

2.8 Bat Habitat Avoidance. Prior to initiating Project activities within suitable habitat, the Designated Biologist(s) shall conduct a bat roosting habitat suitability assessment of any vegetation that may be removed, altered, or indirectly impacted by the Project activities. Any locations with potential for roosting or suitable as a maternity roost will be surveyed by the Designated Biologist(s) using an appropriate combination of structure inspection, sampling, exit counts, and acoustic surveys. Surveys shall be conducted during the appropriate time of day/night to ensure detection of bats. The results of the pre-construction bat surveys shall be submitted to CDFW prior to the initiation of Project activities, per Measure 4.4.

2.8.1 If the presence of bats within the Project is confirmed, a Bat Avoidance and Minimization Plan shall be developed and submitted to CDFW for review and approval. The Bat Avoidance and Minimization Plan shall include avoidance and minimization measures, including the designation of buffers based upon what bat species are found, and a plan for the phased removal of any occupied trees or structures. If the site supports maternity roosts, Permittee shall avoid disturbing those areas.

2.8.2 If the site supports a maternity roost(s) or special-status species, prior to commencing Project activities, Permittee shall conduct an impact assessment and develop minimization and mitigation measures for CDFW review and approval, per Measure 4.4. Permittee shall compensate for impacts and losses to maternity roosts and/or special-status bat habitat through a mitigation strategy approved by CDFW.

2.9 Crotch's Bumble Bee. The Designated Biologist(s) shall conduct focused surveys within one year prior to vegetation removal and/or grading for the presence/absence of Crotch's bumble bee. Surveys shall be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1, by an approved Designated Biologist, familiar with Crotch's bumble bee behavior and life history. Surveys shall be conducted within the Project site and areas adjacent to the Project site where suitable habitat exists. Survey results including negative findings shall be submitted to CDFW 30 days prior to Project-related vegetation removal and/or ground-disturbing activities. If the species is identified onsite, Permittee shall apply for an ITP and obtain "take" coverage prior to the initiation of project activities.

2.10 Special-status Reptiles. Permittee shall minimize impacts to non-listed, special-status reptiles and amphibians within the Project footprint addressed under this Agreement, including, but not limited to those identified in the Project Impacts

section of this Agreement. The Designated Biologist(s) shall conduct pre-activity clearance surveys immediately prior to the initiation of ground-disturbing activities within areas containing suitable habitat, including burrows, sand fields, and rock piles. If any special-status reptiles are detected, the Designated Biologist(s) shall provide the animal sufficient time to leave on its own accord. If any state-listed reptile species is identified, including desert tortoise, and has the potential to be impacted by the Project, Permittee shall halt all Project activities that could result in impacts and contact CDFW immediately. If full avoidance cannot be accomplished, Permittee shall postpone the Project until appropriate CESA authorization is obtained.

- 2.11 On-site Employee Education. Permittee shall conduct an education program for all persons employed or otherwise working on the Project prior to performing any work on-site. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology of the habitats and species identified in this Agreement. The Designated Biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations and Project-specific protective measures included in this Agreement. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site. Upon completion of the education program, employees shall sign a form stating they attended the program and understand all protection measures. These forms shall be filed at the worksite office and available to CDFW upon request.
- 2.12 Work in Wetted Areas. Permittee shall avoid working in the wetted portion of any stream channel during the period of February 1 through September 30 to avoid impacts to native herpetofauna that may be actively reproducing or rearing, unless a diversion plan with minimization measures for native herpetofauna is reviewed and approved by CDFW.
- 2.13 Best Management Practices. Permittee shall actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into streams during Project activities. BMPs shall be monitored by the Designated Biologist(s) and repaired if necessary, to ensure maximum erosion, sediment, and pollution control. Permittee shall prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within and adjacent to Fish and Game Code section 1602 resources. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.

- 2.14 Equipment Use and Cleaning. All equipment shall be cleaned prior to entering areas subject to Fish and Game Code section 1602. Washing must take place where rinse water is collected and disposed of in either a sanitary sewer, landfill, or other facility authorized to accept such rinse water. The cleaning measures must be practical and verifiable. Depending on the nature of the debris, the equipment may be cleaned using mechanical methods (brushing, scraping, prying), compressed air, high-pressure water, or steam. This includes wheels, tires, buckets, stabilizers, undercarriages, and bumpers. The Permittee shall verify and document cleaning has occurred prior to equipment entering areas subject to Fish and Game Code section 1602; documentation of equipment inspections for each date of entry shall be available to CDFW upon request.
- 2.15 Pollution and Litter. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Permittee to ensure compliance.
- 2.15.1 Permittee shall not allow water containing mud, silt, or other pollutants from grading, aggregate washing, or other activities to enter a lake, streambed, or flowing stream or be placed in locations that may be subjected to high storm flows.
- 2.15.2 Spoil sites shall not be located within a lake, streambed, or flowing stream or locations that may be subjected to high storm flows, where spoil shall be washed back into a lake, streambed, or flowing stream where it will impact streambed habitat and aquatic or riparian vegetation.
- 2.15.3 Raw cement/concrete or washings thereof, asphalt, paint, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resources resulting from Project related activities shall be prevented from contaminating the soil and/or entering a lake, streambed, or flowing stream. These materials, placed within or where they may enter a lake, streambed, or flowing stream by Permittee or any party working under contract or with the permission of Permittee, shall be removed immediately.
- 2.15.4 No broken concrete, cement, debris, soil, silt, sand, bark, slash, sawdust, rubbish, or washings thereof, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into areas subject to Fish and Game Code section 1602. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high-water mark of any lake, streambed, or flowing stream.
- 2.15.5 No equipment maintenance shall be done within or near any lake, streambed, or flowing stream where petroleum products or other pollutants from the equipment may enter these areas under any flow.

- 2.16 Trash Abatement and Refuse Removal. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at the end of each workday to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs. Upon completion of Project activities, Permittee shall remove and properly dispose of all refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping.
- 2.17 Stockpile Maintenance. Permittee shall maintain stockpiles to avoid the spread of invasive plants. Permittee shall not stockpile materials within the bed, bank or channel after daily work has been completed.
- 2.18 Staging Areas. Permittee shall confine all Project site-related parking, storage areas, laydown sites, equipment storage, and any other Project site staging activities to locations outside of areas subject to Fish and Game Code section 1602.

3. Compensatory Measures

To compensate for adverse impacts to permanent impacts of 0.89 acre of stream, bed, bank and channel identified above, the Permittee shall provide for mitigation as follows.

- 3.1 Purchase of Credits from Mitigation Bank. Permittee shall compensate for the permanent impacts of 0.89 acres to stream bed, bank, and channel, through the acquisition of no less than a total of 2.67 acres of streambed or riparian habitat preservation credits through a CDFW-approved mitigation bank within San Bernardino County. Written CDFW approval of the mitigation bank is required **prior to purchase of credits**. Mitigation credits shall be purchased, and receipt provided to CDFW, **at least 30 days prior to the initiation of Project activities or within 18 months following start of Project activities if Security is provided**, which includes staging and site preparation, unless security is provided pursuant to Measure 3.2.
- 3.2 Letter of Credit. If Mitigation Bank credits are not purchased and receipt provided to CDFW at least 30 days prior to initiation of Project activities, Permittee shall provide financial securities in the form of a Letter of Credit (LOC) in a form acceptable to CDFW, or other form of security approved by CDFW, for an amount sufficient to purchase 2.67 acres of streambed or riparian habitat preservation through a CDFW-approved mitigation bank. The LOC shall be submitted to CDW for approval and shall be executed prior to initiation of Project activities.
- 3.2.1 Draft Copy of LOC. The Permittee shall provide a draft copy of the LOC to CDFW at the address listed below for review and approval **prior to execution**. The LOC shall not be executed without CDFW's prior approval.
- 3.2.2 Expiration of LOC. In the event that the LOC will expire before the mitigation obligations have been met, the Permittee shall be responsible for providing CDFW a new LOC to replace the existing LOC **at least sixty (60) days**

prior to the expiration date.

- 3.2.3 Execution of LOC. Upon execution of the LOC, the Permittee shall provide the original to the address listed on the LOC template, and one copy of the executed document to CDFW at the address listed below.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

- 4.1 Pre-construction Nesting Bird Survey Report. Prior to commencement of Project activities, Permittee shall submit the results of pre-construction nesting bird surveys completed pursuant to Measure 2.5.1 of this Agreement. Notification shall be submitted in EPIMS and sent via email to R6LSAReporting@wildlife.ca.gov. Please reference Notification No. EPIMS-SBR-31909-R6.
- 4.2 Nesting Bird Summary Reports. Permittee shall prepare and submit to CDFW a summary, as described in Measure 2.5.5 of this Agreement, of nesting species identified onsite, discovery of any of new nests, the status/outcome of any previously identified nest, buffer distances established for each nest, and any adjustments made to established buffers. Summary reports shall be submitted on a weekly basis until there is no further evidence of nesting activity. If the Project results in the abandonment of or damage to a nest, Permittee shall notify CDFW within 24 hours.
- 4.3 Burrowing Owl Plan. If burrowing owls are found onsite before or during construction, the Permittee shall prepare a Burrowing Owl Protection and submit to CDFW for review and approval *following the timelines provided in Measure 2.6.2*. The Burrowing Owl Plan shall include the burrowing owl pre-Project survey results (Refer to Measure 2.6) and Project-specific avoidance and minimization measures that consider, but are not necessarily limited to, (1) pre-Project survey methodology used (i.e., timing, duration, location, and owls detected); (2) pre-Project survey results; (3) qualifications of proposed Designated Biologist(s) that will monitor Project activities where owls are present; (4) Project phasing and timing; (5) installation and monitoring of exclusionary materials, where and when appropriate; (6) monitoring of Project-related noise, vibration, and lighting; and installation of buffers; and (7) procedures and frequency of direct reporting to CDFW.
- 4.4 Bat Habitat Avoidance Survey Reporting. Permittee shall ensure results of bat surveys are submitted to CDFW prior to the start of Project activities. If bats are present, Permittee shall submit a Bat Avoidance and Minimization Plan, and if necessary, an impact assessment and mitigation strategy, per Measure 2.8.
- 4.5 Notification to CNDDDB. If any sensitive species (threatened, endangered, candidate, fully protected, species of special concern, etc.) are observed on or in proximity to the Project site, or during Project surveys, Permittee shall submit California Natural Diversity Data Base (CNDDDB) forms and maps to the CNDDDB

within five working days of the sightings. The CNDDDB form is available online at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submittign-Data>. A copy of this information shall also be mailed within five days to CDFW at the address listed below under Contact Information. Please reference Notification No. EPIMS-SBR-31909-R6.

- 4.6 Notification of Start and End of Construction. Permittee shall notify CDFW, in writing, at least five days prior to initiation of Project activities. Notification shall be submitted in EPIMS and sent via email to R6LSAReporting@wildlife.ca.gov. Please reference Notification No. EPIMS-SBR-31909-R6.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be submitted through EPIMS as instructed by CDFW.

To Permittee:

Maggi Kibbee
TH Shady View, LLC
EPIMS-SBR-31909-R6
Shady View Residential Project - Tentative Tract No. 82126 Project
450 Newport Center Drive, Suite 300
Newport Beach, CA 92660
ShadyView.2022@gmail.com

To CDFW:

Department of Fish and Wildlife
Inland Deserts Region
EPIMS-SBR-31909-R6
Shady View Residential Project - Tentative Tract No. 82126 Project
R6LSAReporting@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the Project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the Project. The decision to proceed with the Project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees,

representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with, or obtaining any other permits or authorizations that might be required under, other federal, state, or local laws or regulations before beginning the Project or an activity related to it. For example, if the Project causes take of a species listed as threatened or endangered under the Endangered Species Act (ESA), such take will be unlawful under the ESA absent a permit or other form of authorization from the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the Fish and Game Code including, but not limited to, Fish and Game Code sections 2050 *et seq.* (threatened and endangered species), section 3503 (bird nests and eggs), section 3503.5 (birds of prey), section 5650 (water pollution), section 5652 (refuse disposal into water), section 5901 (fish passage), section 5937 (sufficient water for fish), and section 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with Fish and Game Code section 1605, subdivision (b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall use the "Amendments & Extension" form in EPIMS to submit the request. Permittee shall include with the completed form, payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with Fish and Game Code section 1605, subdivisions (b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the Project the Agreement covers (Fish & G. Code § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable Fish and Game Code section 711.4 filing fee listed at <https://www.wildlife.ca.gov/Conservation/CEQA/Fees>.

TERM

This Agreement shall expire on October 10, 2027, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to

protect fish and wildlife resources after the Agreement expires or is terminated, as Fish and Game Code section 1605, subdivision (a)(2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the Project described herein. If Permittee begins or completes a Project different from the Project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with Fish and Game Code section 1602.

CONCURRENCE

Through the electronic signature by the permittee or permittee's representative as evidenced by the attached concurrence from CDFW's Environmental Permit Information Management System (EPIMS), the permittee accepts and agrees to comply with all provisions contained herein.

The EPIMS concurrence page containing electronic signatures must be attached to this agreement to be valid.



California Department of
Fish and Wildlife

Permit Details

Permit: EPIMS-SBR-31909-R6 - Shady View Residential Project - Tentative Tract No. 82126 - 2022

Status: Underway
Region: Region 6
Permittee Organization: TH Shady View, LLC.
CDFW Contact: Marina Barton

Standard Agreement

Signature Page

This Standard Agreement is being issued to:

Maggi Kibbee

Final Standard Agreement: [EPIMS-SBR-31909-R6_Final_Draft_Standard_Agreement.pdf](#)
Open and print the attached PDF file.

Exhibits

Concurrence

I am the applicant or I have the authority to sign for the applicant. By my signature, I accept and agree to comply with all the provisions contained herein.

Final Agreement Effective Date:

Permittee Electronic Signature: Sarah Eskandari
First and Last Name

Date Signed: 03/02/2023

Department of Fish and Wildlife

CDFW Electronic Signature: Kim Freeburn

CDFW Representative Title: Environmental Program Manager

Date Signed: 03/07/2023

Acting for:

Attachment B

CDFW Incidental Take Permit Application Incomplete Letter



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 13, 2023

Joe Martin, Senior Vice President – Land Division
TH Shady View LLC
450 Newport Center Drive, Suite 300
Newport Beach, CA 92660
jmartin@trumarkco.com

Subject: Incidental Take Permit Application for Shady View Project (2081-2023-035-06)

Dear Mr. Martin:

On June 23, 2023, the Department of Fish and Wildlife (CDFW) received your Incidental Take Permit Application and on June 26, 2023, CDFW received the appropriate application fee. CDFW has reviewed your request for authorization, pursuant to Fish and Game Code section 2081, subdivision (b), to incidentally take¹ Crotch's bumble bee (*Bombus crotchii*), a species designated as a candidate species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.1.) **CDFW has determined that the above-referenced application is incomplete.**

The application for an Incidental Take Permit (ITP) must be in accordance with the California Code of Regulations, title 14, sections 783.2 and 783.3. CDFW determined the application was incomplete for the following reasons:

- 1. Cal. Code Regs., tit. 14, § 783.2, subd. (a)(1):** This section requires a telephone number for the applicant be provided. In addition, please provide an email address the project proponent can be reached at.
- 2. Cal. Code Regs., tit. 14, § 783.2, subd. (a)(2):** This section is complete.
- 3. Cal. Code Regs., tit. 14, § 783.2, subd. (a)(3):** This section requires a complete description of the project or activity for which the ITP is being sought. The application does not provide a description of the project activities that will occur and instead focuses on the impacts of the project on the species. This

¹ Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "'take' ... means to catch, capture or kill").

Joe Martin
TH Shady View LLC
July 13, 2023
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information is required for CDFW to assess what will occur on site, how it may result in incidental take, and how to mitigate those impacts, and therefore the description of the project is not complete. This information includes a detailed description of the development and any other activities that will occur onsite including but not limited to: construction of residential homes and associated infrastructure, fuel modification zones, road improvements, site preparation, vegetation removal, grading, fill, installation of underground utilities, and debris basins.

4. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(4):** This section requires the location for where the project or activity will occur or be conducted. The project location is not sufficient in detail for CDFW to make calculations of the area that will be disturbed. Therefore, the description of the project location is not complete. Please provide additional information including street address, latitude and longitudes, and any maps and figures available for the project site. This includes kmz's of the project footprint, vegetation mapping, conceptual site plans, grading plans, aerial photographs and photos of the project site.
5. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(5):** This section requires an analysis of whether and to what extent the project or activity for which the permit is sought could result in the taking of species to be covered by the permit. The application does not analyze whether and to what extent the project activities could result in take and therefore is incomplete.
6. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(6):** This section requires a species-specific analysis of the impact of the project when contrasted with the local and range-wide populations and rate of take. Elements of the analysis should be similar to those required in Section 783.2(a)(7). The application does not include any of this information and therefore is incomplete.
7. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(7):** This analysis is intended to determine whether the continued existence, of the species for which take coverage is being requested, will be in jeopardy (e.g., to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species) as a result of your project and should contrast the impact of your project on the species-wide population or locally critical populations. A complete, responsive jeopardy analysis shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of:
 - a. Known population trends;
 - b. Known threats to the species; and

Joe Martin
TH Shady View LLC
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- c. Reasonably foreseeable impacts on the species from other related projects and activities.

This section should include literature citations and footnotes, with any generally unavailable references provided as attachments. The application does not include any of this information and therefore is incomplete.

- 8. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(8):** This section requires proposed measures to minimize and fully mitigate the impacts of the proposed taking. While the application includes some discussion of a proposed nearby site for mitigation, it is minimal and there is no inclusion of measures to minimize project impacts. While the applicant has provided to CDFW a draft ITP and this section is complete, CDFW recommends the draft ITP be included as an Appendix to the application and reference the specific sections within it that fulfill the requirements of this section.
- 9. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(9):** This section requires a proposed plan to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures. While the applicant has provided to CDFW a draft ITP and this section is complete, CDFW recommends the draft ITP be included as an Appendix to the application and reference the specific sections within it that fulfill the requirements of this section.
- 10. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(10):** The application lacks the detail necessary to assure CDFW that money has been allocated to implement required mitigation measures, habitat compensation land acquisition, enhancement of habitat, and establishment of an endowment.
- 11. **Cal. Code Regs., tit. 14, § 783.2, subd. (a)(11):** This section is complete.
- 12. **Cal. Code Regs., tit. 14, § 783.3, subds. (a) & (b):** These sections, when CDFW will act as the responsible agency for purposes of CEQA, the following must be included in the permit application required by section 783.2:
 - (1) The name, address, telephone number and contact person of the lead agency.
 - (2) A statement as to whether an environmental impact report, negative declaration, mitigated negative declaration, initial study has been prepared or is being considered, or whether another document prepared pursuant to a regulatory program certified pursuant to Public Resources Code section 21080.5 (and listed in title 14, California Code of Regulations, section 15251) has been prepared or is being considered.
 - (3) At the option of the applicant, a notice of preparation, notice of determination, or draft or final environmental document may be attached.

Joe Martin
TH Shady View LLC
July 13, 2023
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Additionally, please note that the species for which take coverage is being requested should be included and analyzed within the CEQA document. If it is not, CDFW strongly recommends preparing an Addendum to include an analysis of project impacts to the species. The application does not include any of this information and therefore is incomplete.

CDFW's issuance of an ITP is a discretionary action under the California Environmental Quality Act (CEQA), and therefore preparation of a CEQA document is necessary prior to ITP issuance (See Cal. Code Regs., tit. 14, § 783.3.). CDFW can accept an ITP Application as complete if CEQA is the only outstanding issue, and if the type of CEQA document being prepared has been identified, however the ITP cannot be fully drafted or issued until the CEQA process has been completed through the filing of a Notice of Determination. It is important that the take proposed to be authorized by CDFW's ITP be described in detail in the CEQA document prepared for the Project. In addition, CDFW may have recommendations during the CEQA process that could result in modifications to the Project description; if so, any changes that alter the extent or impact of take should be taken into account for subsequent Application submittal.

CDFW looks forward to working with you on developing a complete Application and towards ITP finalization. If you have any questions regarding these comments, or would like to arrange for additional consultation, please contact Marina Barton, Senior Environmental Scientist (Specialist), at Marina.Barton@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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