



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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August 30, 2023

Jose Fernandez
City of Bakersfield
Development Services Department
1600 Truxton Avenue
Bakersfield California, 93301



**Subject: Hageman Industrial Park (Project)
Notice of Preparation (NOP)
SCH No. 2023070665**

Dear Jose Fernandez:

The California Department of Fish and Wildlife (CDFW) received a notice of preparation (NOP) from the City of Bakersfield 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 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

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.

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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: Hageman Properties, LLC

Objective: Hageman Properties, LLC (Property Owner and Applicant) has applied to amend the City of Bakersfield's Metropolitan Bakersfield General Plan land use designation and the Municipal Code zone classification for a 78.94 gross acre, triangularly shaped site, located at the southeast corner of the Hageman Road and Landco Drive intersection. The proposed buildings could provide up to 1,197,643 square feet (sq. ft.) of building space consisting of 40 percent manufacturing uses and 60 percent warehouse uses with required parking spaces to be determined upon the future uses specific to each building.

The proposed General Plan Amendment would change the land use designation on the Project site from HI (Heavy Industrial) to SI (Service Industrial). The proposed Zone Change would change the zone classification on the Project site from M-3 (Heavy Industrial) to M-2 (General Manufacturing). The property owner is proposing this Project to create consistency with Vesting Tentative Parcel Map (VTPM) No. 12314. VTPM No. 12314 is only tentative and has not been recorded.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Bakersfield 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 are special-status species that may be present at the Project site. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding

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potential impacts to special-status species including, but not limited to, the federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State candidate endangered Crotch's bumblebee (*Bombus crotchii*), the federally and State endangered Bakersfield cactus (*Opuntia basilaris*) and California jewelflower (*Caulanthus californicus*), and the State Species of Special Concern Bakersfield legless lizard (*Anniella grinnelli*), burrowing owl (*Athene cunicularia*), western mastiff bat (*Eumops perotis californicus*), hoary bat (*Lasiurus cinereus*), western spadefoot (*Spea hammondi*), and American badger (*Taxidea taxus*).

In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified biologist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project site. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, and to identify any Project-related impacts under CESA and other species of concern.

I. Environmental Setting and Related Impact

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 CDFW or the United States Fish and Wildlife Service (USFWS)?

San Joaquin Kit Fox

CNDDDB records show that San Joaquin kit fox (SJKF) have been documented near the Project site and are known to occur within the City of Bakersfield (CDFW 2023). In addition to grasslands, SJKF den in a variety of areas such as rights-of-way, vacant lots, agricultural and fallow or ruderal habitat, dry stream channels, and canal levees, and populations can fluctuate over time. SJKF are also capable of occupying urban environments (Cypher and Frost 1999). SJKF may be attracted to the Project site due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. As a result, there is potential for SJKF to occupy the Project site and surrounding area.

CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS' "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities. CDFW also recommends a qualified biologist conduct on-site worker awareness training and inspect all construction materials for

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kit fox before use. Any pits or trenches created shall be sloped or covered to prevent inadvertent take.

SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Swainson's Hawk

Swainson's hawks (SWHA) exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed may 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) from loss of foraging habitat. CDFW recommends the CEQA document prepared for this Project address potential impacts to SWHA by including the following avoidance and minimization measures.

The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

SWHA are known to travel for miles to forage. Therefore, CDFW recommends protocol surveys be conducted as part of the biological technical studies conducted in support of the CEQA document by a qualified biologist with knowledge of SWHA natural history and behaviors, following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). CDFW recommends that the survey be conducted by a qualified biologist again within the survey season immediately prior to project implementation. 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

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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 acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

Crotch's bumble bee (CBB) are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. 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. As noted in the NOP, the Project site contains a mix of native and non-native grasses and has not had active crop cultivation since 2018. As such, CBB could potentially use the habitats within the Project site.

CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document to determine if the Project site or its immediate vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023b), as part of the biological technical studies conducted in support of the draft environmental impact report.

Special Status Plants

Plants listed pursuant to the California Endangered Species Act (CESA) and the Native Plant Protection Act, as well as other special-status plants such as California Rare Plant Rank (CRPR) may occur within the Project site. Species of concern include, but are not limited to, the federally endangered and State endangered Bakersfield cactus (*Opuntia basilaris*) and California jewelflower (*Caulanthus californicus*). Special-status plant species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (CNPS 2020), all of which may be unintended impacts of the Project. Therefore, impacts of the Project will potentially have significant and cumulative impacts to populations of the species mentioned above if present in the Project site.

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CDFW recommends that a qualified botanist conduct a habitat assessment of the Project site as part of the biological technical studies conducted in support of the CEQA document to determine if the Project site or its vicinity contains suitable habitat for special-status plant species. If suitable habitat is present, CDFW recommends that individual Project sites be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities” (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

If special-status plants are detected, CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take of that species. If take cannot be avoided, take authorization would need to occur through issuance of an ITP by CDFW to comply with CESA and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

State Species of Special Concern

Bakersfield legless lizard, burrowing owl (BUOW), western mastiff bat, hoary bat, western spadefoot, and American badger have the potential to occur in the Project site. These species have been documented to occur in the vicinity of the Project site, which supports requisite habitat elements (CDFW 2023).

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document, to determine if project sites or their immediate vicinity contain potential habitat for the species mentioned above. If potential habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around dens of mammals like the American badger as well as the entrances of burrows that can provide refuge for special-status small mammals and western spadefoots.

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For burrowing owl CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys as part of the biological technical studies conducted in support of the CEQA document following the California Burrowing Owl Consortium's Burrowing Owl Survey Protocol and Mitigation Guidelines (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012). Specifically, if suitable habitat is present at an individual Project site, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

If BUOW are detected, CDFW recommends no-disturbance buffers, as outlined in the Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW 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)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.


Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the San Joaquin kit fox, Bakersfield cactus, and California jewelflower. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA

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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 Project activities.

CDFW appreciates the opportunity to comment to assist the City of Bakersfield in identifying and mitigating Project 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:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

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bee (*Bombus occidentalis occidentalis*) as Endangered under the California
Endangered Species Act. October 2018.