



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243 - 4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



April 11, 2025

Nicole Menchaca, Supervising Planner  
Kern County Planning and Natural Resources Department  
2700 "M" Street, Suite 100  
Bakersfield, California 93301  
(661) 862 – 8738  
[huisken@kerncounty.com](mailto:huisken@kerncounty.com)

**Subject: Airport Commerce Center Industrial Project (Project)  
Notice of Preparation (NOP)  
State Clearinghouse No.: 2025030498**

Dear Nicole Menchaca:

The California Department of Fish and Wildlife (CDFW) received a NOP from Kern County, as Lead Agency, for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, 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 the 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

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

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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 proposed, for example, reasonably foreseeable future projects may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future projects 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 will be required.

**CDFW Ecological Reserve:** Fish and Game Code section 1583 states "Except in accordance with the regulations of the commission it is unlawful to enter upon any ecological reserves established under the provisions of the article, or to take therein any bird or the nest or eggs thereof, or any mammal, fish, mollusks, crustaceans, amphibia, reptiles or any other form of plant or animal life." In addition, California Code of Regulations, Title 14, Section 630 states "All ecological reserves are maintained for the primary purpose of developing a statewide program for protection of rare, threatened, or endangered native plants, wildlife, aquatic organisms, and specialized terrestrial or aquatic habitat types", and therefore, any other activity on these lands is restricted.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the Project planning process if an ITP may be pursued for the Project.

**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

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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).

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** ACC Bakersfield JV, LLC

**Objective:** The Project proposes to construct four single-story industrial warehouses totaling 1,505,440 square feet, two quick-serve restaurants, and related site improvements. Off-site improvements along Airport Drive, Merle Haggard Drive, Landings Way, and Petrol Road are also part of the Project.

**Location:** The Project is located on approximately 109 acres outside of the City of Bakersfield limits in the unincorporated Oildale area of Kern County. The property is surrounded by Petrol Road, Merle Haggard Drive, Landings Way, and Airport Drive. Meadows Field Airport is located approximately 0.3 miles southwest of the Project and this Project is within its Sphere of Influence. The Assessor's Parcel Numbers (APNs) associated with the Project are: 483-040-32, 483-040-33, 483-040-42, 483-040-43, 483-040-45, and 483-040-46.

**Timeframe:** December 2025 to May 2028.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist Kern County 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 Draft Environmental Impact Report prepared for this Project.

### **Proximity of Bakersfield Cactus Ecological Reserve**

The Project site is directly adjacent to CDFW's Bakersfield Cactus Ecological Reserve (BCER). The BCER provides habitat for a number of special-status species and is known to support a robust population of the State and federally endangered and California Rare Plant Rank (CRPR) 1B.1 Bakersfield cactus (*Opuntia basilaris* var. *treleasei*), and supports regular documented use by the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*). The Project's adjacency to

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the BCER increases the likelihood that special-status species, particularly San Joaquin kit fox (SJKF) are currently utilizing the habitats within the Project, and may continue to do so to some extent after Project construction.

Direct impacts to the BCER are prohibited. In addition, CDFW recommends that Project facilities be sited and designed to minimize and avoid indirect impacts to the BCER, including but not limited to impacts associated with noise, traffic, and lighting. The BCER was acquired and permanently conserved to mitigate for impacts to species such as Bakersfield cactus and SJKF, associated with residential development in and around the City of Bakersfield. Because the BCER was conserved established solely to mitigate impacts to threatened and endangered species habitat, any activities, such as implementation of the proposed Project, which could degrade the habitat quality, directly impact wildlife utilizing these areas, or limit the habitat connectivity in these areas should mitigate these impacts by protection in perpetuity of an additional appropriate amount of acreage in the Project area vicinity. CDFW strongly recommends including an appropriately sized buffer between the Project footprint and the BCER.

Additionally, CDFW recommends that a robust cumulative impacts analysis be conducted for biological resources as part of the Project and that CDFW's Regional Ecological Reserve Management Unit staff be contacted well in advance of Project initiation. These recommendations are provided in more detail in the editorial comments and/or suggestions section below.

### **Special-status Species**

Based on aerial imagery, the Project site contains regularly disked annual grassland and ruderal habitats. The site also appears to be bisected by a stream that runs from the northeast corner of the Project site to the southwest corner. The Project site is bordered by an existing tank farm located to the northwest of the Project site; regularly disked annual grassland and ruderal vegetation to the south; an Amazon warehouse/logistics facility to the west; and regularly disked ruderal vegetation to the east.

Based on a review of the Project Description, aerial imagery, the surrounding habitat, and California Natural Diversity Database (CNDDDB) records (CDFW 2025), and our own BCER survey data, the Project site is within the geographic range of several special-status animal species including the State and federally endangered and State fully-protected blunt-nosed leopard lizard (*Gambelia sila*), the State and federally endangered and CRPR 1B.1 Bakersfield cactus; the federally endangered and State threatened SJKF ; the State threatened Swainson's hawk (*Buteo swainsoni*); the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); and the State Species of Special Concern American badger (*Taxidea taxus*), Bakersfield legless lizard (*Anniella grinnelli*), and California glossy snake (*Arizona elegans occidentalis*). These resources would need to be evaluated and

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addressed prior to any approvals that would allow ground-disturbing activities or land use changes.

To adequately assess potential Project related impacts to biological resources in the Draft Environmental Impact Report (DEIR), CDFW recommends that a qualified biologist perform relevant database reviews and other research of the Project area, then conduct focused habitat assessments and/or focused biological surveys during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project site. CDFW recommends this initial work be documented and used to inform further efforts that may be needed thereafter including the need for additional protocol surveys and/or the development of avoidance, minimization, and/or mitigation measures. This information and analysis may then be used to consider the development of modified or new project alternatives to avoid and minimize potentially significant environmental impacts on the biological environment. This information is critical to make an informed decision during the CEQA process and to ensure Project compliance with CESA, Fish and Game code, and other applicable State and federal laws and regulations.

### **Blunt-Nosed Leopard Lizard**

The Project site is within the known geographic range of blunt-nosed leopard lizard (BNLL) and several occurrences are noted within 10 miles of the Project site (CDFW 2025). Suitable BNLL habitat includes all areas of grassland and shrub habitat that contain required habitat elements, such as small mammal burrows and open areas for basking. BNLL are also known to utilize open space patches between suitable habitat features including disturbed sites and unpaved access roadways. Based on aerial imagery and the information provided in the NOP, portions of the Project site may contain suitable habitat for BNLL.

As BNLL have the potential to occupy the Project site, CDFW recommends that a qualified biologist conduct protocol surveys in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) as part of the biological technical studies conducted in support of the DEIR. This survey protocol, designed to optimize BNLL detectability, reasonably assures CDFW that ground disturbance will not result in take of this fully protected species.

CDFW also recommends the DEIR include the following:

#### **Recommended Mitigation Measure 1: BNLL Surveys**

CDFW recommends that a qualified biologist conduct protocol surveys in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) prior to the initiation of any ground-disturbance activities that may occur as part of this Project. This survey protocol, designed to optimize

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BNLL detectability, reasonably assures CDFW that ground disturbance will not result in take of this fully protected species.

### **Recommended Mitigation Measure 2: BNLL Take Avoidance**

CDFW also recommends that consultation with CDFW occur to discuss how to implement ground-disturbing activities and avoid take if any BNLL detection, known burrows, or egg clutch sites are detected during surveys or during construction of the Project.

### **Special-Status Plants, Including Bakersfield Cactus**

Several species of special-status plants have the potential to occur within the Project site, including Bakersfield cactus (BC). BC is known to occur within the BCER, which is located directly adjacent to the Project site. Based on aerial imagery, the Project site consists of annual grassland habitat interspersed with small pockets of valley saltbush scrub, which may support special-status plants, including BC. 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 2025), all of which may be unintended direct and indirect impacts of the Project. Therefore, Project activities may potentially have significant indirect, direct, and cumulative impacts to populations of the species mentioned above if present in and/or adjacent to the Project site.

CDFW recommends that the Project site 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) as part of the biological technical studies conducted in support of the DEIR. 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.

CDFW also recommends the DEIR include the following:

### **Recommended Mitigation Measure 3: Special-status Plants Avoidance Buffer**

If BC or other 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 State listed and special-status plant species. If buffers cannot be maintained, consultation with CDFW is warranted to determine minimization and mitigation measures for impacts to special-status plant species.

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#### **Recommended Mitigation Measure 4: Special-status Plants Take Authorization**

If State-listed plant species, including BC, are identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, CDFW recommends the Project proponent pursue take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) or section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b) to comply with CESA.

#### **San Joaquin Kit Fox**

Based on aerial imagery, information provided in the NOP, and CDFW's SJKF detections on the adjacent BCER, the Project site contains suitable habitat for SJKF denning and foraging. Specifically, the Project site is within the known geographic range of SJKF, the species is known to inhabit the Project site and adjacent BCER, and there are multiple nearby occurrences listed on CNDDDB (CDFW 2025). The Bakersfield area is home to a significant population of SJKF and the urban population of SJKF has been recorded to utilize certain types of anthropogenically altered habitats (Cypher 2013). In addition, SJKF may be attracted to both construction materials (pipes, etc.) and construction footprints due to the type and level of activity (excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance. SJKF will readily use shipping containers, portable buildings, and stacks of materials (e.g., I-beams, wooden boards) with spaces within or underneath them for denning, in addition to pipes and culverts (Cypher et al. 2023). Therefore, as a minimization measure during construction, CDFW recommends thoroughly inspecting all construction materials or structures with sufficient spaces for SJKF, in addition to pipes and culvert-like structures, before these materials are used or moved in any way. Another recommended minimization measure which would help deter SJKF from creating dens under construction materials is to elevate materials one foot or more off the ground using k-rails or similar structures.

As SJKF have a high potential to den and/or forage within the Project site and have been documented within the Project footprint, CDFW recommends that the Project proponent pursue SJKF take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) to comply with CESA.

In addition, to assess and minimize potential Project related impacts to SJKF dens, CDFW recommends that a qualified biologist assess the presence/absence of SJKF by conducting focused surveys following the U.S. Fish and Wildlife Service (USFWS) "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (USFWS 2011) to detect SJKF and their sign in all Project areas and a 500-foot buffer of Project areas as part of the biological studies conducted in support of the DEIR.

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CDFW also recommends the DEIR include the following:

#### **Recommended Mitigation Measure 5: SJKF Preconstruction Surveys**

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", prior to the initiation of Project ground disturbance activities. Specifically, CDFW recommends conducting these surveys over the entirety of the Project site no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities.

#### **Recommended Mitigation Measure 6: SJKF Avoidance Buffer**

CDFW recommends implementing no-disturbance buffers, as described in the USFWS' "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (2011) (USFWS Protocol) around potentially suitable or known SJKF den sites.

#### **Recommended Mitigation Measure 7: SJKF Take Authorization**

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF is not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is required to comply with CESA.

### **Swainson's Hawk**

Swainson's hawks (SWHA) are known to breed within the Central Valley of California and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, the Project site contains suitable habitat for SWHA foraging, increasing the likelihood of SWHA occurrence within the vicinity. In addition, any power poles or trees in the Project vicinity may be utilized for perching and/or nesting. SWHA are known to travel up to 18 miles to forage and are also attracted to ground disturbing activities such as disking because these activities make prey vulnerable by reducing cover (Estep 1989). Several CNDDDB occurrences are noted within this 18-mile distance of the Project site. SWHA exhibit high nest-site fidelity year after year and lack of suitable habitat limits their local distribution and abundance (CDFW 2016).

Therefore, CDFW recommends surveys for SWHA be conducted as part of the biological technical studies conducted in support of the DEIR by a qualified biologist following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000).



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CDFW also recommends the DEIR include the following:

**Recommended Mitigation Measure 8: SWHA Surveys Prior to Construction**

Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that additional surveys, following the survey methodology developed by the SWHA Technical Advisory Committee, be repeated the survey season immediately prior to any ground disturbing activities that occur as part of this Project.

**Recommended Mitigation Measure 9: SWHA Avoidance Buffer**

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

**Recommended Mitigation Measure 10: SWHA Take Authorization**

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

**Recommended Mitigation Measure 11: SWHA Foraging Habitat Mitigation**

Finally, CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. 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 1 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 ¾ acre of HM land for each acre of development is advised.

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- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

### **Western Burrowing Owl**

The California Fish and Game Commission named western burrowing owl (BUOW) as a candidate for listing as a protected species under CESA on October 10, 2024. This action advanced the species to candidacy under CESA and as such BUOW now receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). It is illegal to import, export, take (hunt, pursue, catch, capture, or kill, or attempt engage in any of these activities), possess, purchase, or sell BUOW or any part or product thereof (Fish & G. Code, §§ 86, 2080, 2085).

The Project site is within the known geographic range of BUOW and there are multiple historic and recent occurrences located within five miles of the Project site (CDFW 2025). BUOW inhabit open grasslands and desert scrublands containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Based on aerial imagery and the information provided in the DEIR, the Project site and adjacent lands contain suitable habitat for BUOW nesting and foraging.

As BUOW are known to occur within the Project vicinity and suitable nesting and foraging habitat is present within the Project site, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) as part of the biological studies conducted in support of the DEIR.

CDFW also recommends the DEIR include the following:

#### **Recommended Mitigation Measure 12: BUOW Pre-construction Surveys**

Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that a qualified biologist conduct surveys for BUOW following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) be conducted the survey season immediately prior to initiation of ground-disturbance activities.

#### **Recommended Mitigation Measure 13: BUOW Avoidance Buffer**

Should a BUOW or known BUOW den (active or inactive) be detected, either during pre-construction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

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### **Recommended Mitigation Measure 14: BUOW Take Authorization**

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are 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 ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

### **Crotch's Bumble Bee**

The Project site is within the known geographical range of Crotch's bumble bee (CBB) and a historical occurrence has been documented within two miles of the Project site (CDFW 2025). 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, and these habitat elements may be present within the Project site and Project vicinity.

As the Project site is within the known range for CBB and suitable nesting and foraging habitat is present within the Project site and vicinity, CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the DEIR 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 2023), as part of the biological technical studies conducted in support of the DEIR.

CDFW also recommends the DEIR include the following:

### **Recommended Mitigation Measure 15: CBB Surveys**

If potentially suitable habitat is identified as part of the biological technical studies conducted in support of the DEIR, CDFW recommends that a qualified biologist conduct focused surveys for CBB the survey season immediately prior to construction, following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

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### **Recommended Mitigation Measure 16: CBB Avoidance**

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

### **Recommended Mitigation Measure 17: CBB Take Authorization**

If CBB is detected, either during surveys or Project construction, and take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

### **State Species of Special Concern**

The Project is within the geographic range of species of special concern such as American badger, Bakersfield legless lizard, and California glossy snake and suitable habitat may be present within the Project site. As such, CDFW recommends a qualified biologist conduct a habitat assessment and focused surveys for these species as part of the biological technical studies conducted in support of the DEIR.

CDFW also recommends the DEIR include the following:

### **Recommended Mitigation Measure 18: Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for American badger, Bakersfield legless lizard, and California glossy snake, using appropriate survey methodologies, immediately prior to any ground disturbing activities that may occur as part of the Project.

### **Recommended Mitigation Measure 19: Avoidance**

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around dens or burrows/refugia of these species. If these species are observed on the Project site, CDFW recommends that Project construction activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own accord.

### **Editorial Comments and/or Suggestions**

**Nesting birds:** CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th),

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the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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

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

**Lake and Streambed Alteration:** According to the NOP, a stream bisects through the Project site, and this stream is likely subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake;

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(b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the DEIR approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

**CDFW Ecological Reserve:** The Project site is within close proximity to the BCER, which provides habitat for federal, and State listed species as well as many special-status species.

In addition to the recommendations made above, CDFW recommends consultation with CDFW's Regional Ecological Reserve Management Unit staff well in advance of Project initiation to demonstrate accurate delineation of property boundaries to prevent inadvertent encroachment on CDFW-owned lands. Consultation is also recommended to discuss planned egress and egress to the Project site for the purposes of avoiding impacts on CDFW-owned lands, which is prohibited by Title 14 California Code of Regulations § 630. Please contact John Battistoni, Regional Ecological Reserve Management Unit Supervisor, at the address on the letterhead above or via email at [John.Battistoni@wildlife.ca.gov](mailto:John.Battistoni@wildlife.ca.gov).

**Project Alternative Analysis:** CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the Project's DEIR be used to develop and modify the Project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible.

**Cumulative Impacts:** CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). Cumulative impacts are recommended to be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources

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and be focused specifically on the resource, not the Project. An appropriate resource study area should also be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends closely evaluating the need for a cumulative impacts analysis for the following species as part of the DEIR due to these species being in poor or declining health or at risk: BNLL, BC, SJKF, SWHA, BUOW, CBB, American badger, Bakersfield legless lizard, and California glossy snake. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to the CNDDDB at the following email address:

[CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**

The Project, as proposed, could have an impact on biological resources, and an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the NOP to assist the Kern County in identifying and mitigating Project impacts on biological resources. A Mitigation

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Monitoring and Reporting Program (Attachment 1) is included below to assist Kern County with incorporating the recommended mitigation measures provided above.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions regarding this letter or further coordination, please contact Marile Colindres, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 974-3452, or by electronic mail at [marile.colindres@wildlife.ca.gov](mailto:marile.colindres@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
*Sarah Paulson*  
E9964E60293D40A...

For Julie A. Vance  
Regional Manager

ATTACHMENT

ec: State Clearinghouse  
Governor's Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)



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**Attachment 1**

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

**PROJECT: Airport Commerce Center Industrial Project (Project)  
Notice of Preparation (NOP)**

**SCH No.: 2025030498**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<b><i>Before Disturbing Soil or Vegetation</i></b>	
Blunt-nosed leopard lizard (BNLL)	
<b>Recommended Mitigation Measure 1:</b> BNLL Surveys	
<b>Recommended Mitigation Measure 2:</b> BNLL Take Avoidance	
Special-status Plants	
<b>Recommended Mitigation Measure 4:</b> Special-status Plants Take Authorization	
San Joaquin Kit Fox (SJKF)	
<b>Recommended Mitigation Measure 5:</b> SJKF Preconstruction Surveys	
<b>Recommended Mitigation Measure 7:</b> SJKF Take Authorization	
Swainson's Hawk (SWHA)	
<b>Recommended Mitigation Measure 8:</b> SWHA Surveys Prior to Construction	
<b>Recommended Mitigation Measure 10:</b> SWHA Take Authorization	
<b>Recommended Mitigation Measure 11:</b> SWHA Foraging Habitat Mitigation	
Western Burrowing Owl (BUOW)	

<b>Recommended Mitigation Measure 12:</b> BUOW Preconstruction Surveys	
<b>Recommended Mitigation Measure 14:</b> BUOW Take Authorization	
Crotch's Bumble Bee (CBB)	
<b>Recommended Mitigation Measure 15:</b> CBB Surveys	
<b>Recommended Mitigation Measure 17:</b> CBB Take Authorization	
State Species of Special Concern	
<b>Recommended Mitigation Measure 18:</b> Surveys	
<b><i>During Construction</i></b>	
Special-status Plants	
<b>Recommended Mitigation Measure 3:</b> Special-status Plants Avoidance Buffer	
San Joaquin Kit Fox (SJKF)	
<b>Recommended Mitigation Measure 6:</b> SJKF Avoidance Buffer	
Swainson's Hawk (SWHA)	
<b>Recommended Mitigation Measure 9:</b> SWHA Avoidance Buffer	
Western Burrowing Owl (BUOW)	
<b>Recommended Mitigation Measure 13:</b> BUOW Avoidance Buffer	
Crotch's Bumble Bee (CBB)	
<b>Recommended Mitigation Measure 16:</b> CBB Avoidance	
State Species of Special Concern	

<b>Recommended Mitigation Measure 19:</b> Avoidance	
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