



DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
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September 9, 2025

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**Subject: General Plan Amendment No. 21-0424 and Williamson Act Cancellation  
25-0001 (Project)  
State Clearinghouse No.: 2025031371  
Mitigated Negative Declaration (MND)**

Dear Ashley Knight:

The California Department of Fish and Wildlife (CDFW) received a MND from the City of Bakersfield, as Lead Agency, for the Project pursuant 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 Projects that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Projects 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.

**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).

**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).

**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.

**Other Special-Status 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

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specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Plan.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** New Gen Group, Inc.

**Objective:** The Project will develop 147 single-family residential lots across the 28.91-acre Project site. The proposed lots will range in size from 4,589 square feet to 11,462 square feet, with a typical lot size of approximately 5,150 square feet. The Project will include full construction of Mountain Vista Drive, which will traverse the site and connect to McCutchen Road, providing circulation and access for future residents. Williamson Act Contract cancellation is being pursued in accordance with state law, based on findings that the proposed use is consistent with the City's General Plan and that cancellation is in the public interest.

**Location:** The Project is located on the northside of McCutchen Road between Buena Vista Road and Old River Road. The two contiguous parcels affected are APNs 541-010-23 and 541-010-27 in the southwest portion of the City of Bakersfield.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the City of Bakersfield in adequately identifying and/or mitigating the Projects' 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 MND.

Aerial imagery and the biological resource evaluation document show that the Project site has been in agricultural use for several decades. The site is surrounded by recent housing developments to the east, north, and west, and agriculture orchards to the south. Based on a review of the MND, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, the Project site is within the geographic range of several special-status animal and plant species, and the MND proposes specific mitigation measures to reduce impacts to these species to a less than significant level. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for a number of special-status animal species, including, but not limited to, the species identified in **Attachment 1** of this letter.

### **San Joaquin Kit Fox**

The Project sites are within the known geographic range of San Joaquin kit fox (*Vulpes macrotis mutica*) (SJKF), and the City of Bakersfield is home to a significant urban population of this federally endangered and State threatened species. There are also

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multiple recorded occurrences of SJKF in the Project vicinity (CDFW 2025). In addition to utilizing natural habitats, the urban population of SJKF has been recorded to utilize certain types of anthropogenically altered habitats (Cypher 2013), including foraging within agricultural lands (Warrick et al. 2007); (Cypher et al. 2005). Additionally, 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 mitigation measures 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. To help deter SJKF from creating dens under construction materials, CDFW recommends elevating materials one foot or more off the ground using k-rails or similar structures.

To minimize potential Project related significant impacts to SJKF, CDFW recommends modifying Mitigation Measure 4 to include the following:

#### **Recommended Mitigation Measure 1: SJKF Preconstruction Surveys**

CDFW recommends assessing presence/absence of SJKF by conducting focused den surveys for the species 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 2: SJKF Avoidance Buffer**

CDFW recommends implementing no-disturbance buffers, as described in the U.S. Fish and Wildlife Service (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 3: SJKF Take Authorization**

If the no-disturbance buffers outlined in the USFWS SJKF Protocol 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, take authorization through acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

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## **Swainson's Hawk**

Swainson's hawk (*Buteo swainsoni*) (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). Several reported CNDDDB occurrences are within the Project vicinity. SWHA exhibit high nest-site fidelity year after year, and lack of suitable habitat limits their local distribution and abundance (CDFW 2016). Power poles and any trees, even those of ornamental species and in association with homes and other structures 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).

As SWHA are known to occur within the Project vicinity and suitable foraging habitat is present within the Project site, and mitigation measures were not provided in the MND to mitigate for potential significant impacts to SWHA, CDFW recommends the following:

### **Recommended Mitigation Measure 4: SWHA Surveys Prior to Construction**

CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) the breeding season immediately prior to any ground disturbing activities that occur as part of this Project.

### **Recommended Mitigation Measure 5: 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 6: 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.

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### **Recommended Mitigation Measure 7: 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  $\frac{3}{4}$  acre 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  $\frac{1}{2}$  acre of HM land for each acre of development is advised.

### **Western Burrowing Owl**

The California Fish and Game Commission approved western burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project site is within the known geographic range of BUOW and there are multiple historic and recent occurrences located within ten miles of the Project site (CDFW 2025). BUOW inhabit open grasslands, agricultural lands, and desert scrublands containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. BUOW also commonly nest along canals, irrigation ditches, and other infrastructure. Based on aerial imagery the Project site and adjacent lands may contain suitable habitat for BUOW nesting and foraging.

As BUOW are known to occur within the Project vicinity and suitable nesting and foraging habitat may be present within the Project site and adjacent lands, CDFW recommends modifying Mitigation Measure 3 to include the following:

### **Recommended Mitigation Measure 8: BUOW Preconstruction Surveys**

Depending on the time between the initial survey efforts conducted in support of the MND and Project construction, CDFW recommends that a qualified biologist conduct surveys for BUOW following the 2012 Staff Report on Burrowing Owl

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Mitigation (CDFG 2012) be conducted the survey season immediately prior to initiation of ground-disturbance activities.

### **Recommended Mitigation Measure 9: 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.

### **Recommended Mitigation Measure 10: 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 range of Crotch's bumble bee (*Bombus crotchii*) (CBB) and CNDDDB shows a 2020 occurrence within 5 miles of the site (CDFW 2025). 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. 2015). 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 it does not appear that CBB was evaluated in the MND or associated biological resource evaluation, CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project site or its immediate vicinity contain habitat suitable to support CBB. 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). If surveys indicate the presence or potential presence of CBB, consultation with CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. 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.

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## **State Species of Special Concern**

The Project is within the geographic range of species of special concern such as Tulare grasshopper mouse (*Onychomys torridus tularensis*) and California glossy snake (*Arizona elegans occidentalis*), and suitable habitat may be present within the Project site. As it does not appear that these species were evaluated in the MND or associated biological resource evaluation, CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project site or its immediate vicinity contain habitat suitable to support Tulare grasshopper mouse or California glossy snake.

CDFW also recommends including the following:

### **Recommended Mitigation Measure 11: Preconstruction Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for these species, using appropriate survey methodologies, immediately prior to any ground disturbing activities that may occur as part of the Project.

### **Recommended Mitigation Measure 12: 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), 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

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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.

**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, or lack of recent occurrence records, in the CNDDDB does not mean a species is not present. 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 to determine whether 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, would have an impact on fish and/or wildlife, and assessment of environmental document 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

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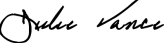
underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City of Bakersfield in identifying and mitigating Project impacts on biological resources. A Mitigation Monitoring and Reporting Program (Attachment 2) is included below to assist the City of Bakersfield 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:  
  
FA83F09FE08945A  
Julie A. Vance  
Regional Manager

## ATTACHMENTS

ec: State Clearinghouse  
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