



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



March 28, 2025

Brandi Cummings  
City of Paso Robles  
Community Development Department 1000  
Spring Street  
Paso Robles, California 93446  
[planning@prcity.com](mailto:planning@prcity.com)

**Subject: The Landing Paso Robles Majestic Realty Co. (Project)  
Recirculated Draft Environmental Impact Report (RDEIR)  
SCH No.: 2021050487**

Dear Brandi Cummings:

The California Department of Fish and Wildlife (CDFW) received a RDEIR from City of Paso Robles for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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, we appreciate 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 & Game Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 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., Section 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.

*Conserving California's Wildlife Since 1870*

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, Section 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 & Game Code, Section 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:** Majestic Realty Co.

**Objective:** The Project proposes the development of a 136.3-acre Project site to allow for the construction of The Landing Paso Robles, a distribution warehouse and business park center, including redevelopment of the former Paso Robles Boys School site. The Project is seeking entitlements for a Grading Permit Application, a Zone Change, a Vesting Tentative Tract Map, a Conceptual Master Development Plan, a specific Development Plan for Phase 1, and an Oak Tree Removal permit. Future entitlements would include individual Conditional Use Permits (CUPs) or Planned Development applications, as appropriate, for the individual projects within the Conceptual Master Development Plan.

**Location:** The Project is located on 4545 Airport Rd, Paso Robles within Assessor's Parcel Number (APN) 025-434-001.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the City of Paso Robles 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.

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CDFW originally provided comments to the City of Paso Robles for the Draft Environmental Impact Report (DEIR) on August 2, 2023, and provided recommendations pertaining to Crotch's bumble bee (*Bombus crotchii*) and oak trees (*Quercus spp.*). After a review of the RDEIR, CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), and the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee.

### **San Joaquin Kit Fox**

Mitigation Measure BIO / mm-3.9 states that San Joaquin kit fox (SJKF) burrows would be avoided with the following no-disturbance buffers:

- potential SJKF den – 50 feet
- known SJKF den – 100 feet
- SJKF pupping den – 150 feet

CDFW concurs with implementing appropriate no-disturbance buffers but recommends Mitigation Measure BIO / mm-2.9 be adjusted to state that consultation with CDFW occur to discuss appropriate no-disturbance buffer distances for SJKF natal dens, if detected. CDFW also recommends, in the event a SJKF is detected during surveys or construction activities, that consultation with CDFW occur to determine 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).

### **Western Burrowing Owl**

The California Fish and Game Commission (FGC) 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 (Notice Register) on October 25, 2024. As such, burrowing owl (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). CDFW recommends the RDEIR be updated to reflect that BUOW is a protected species under CESA.

The RDEIR also states on Page 247 that, "The closest reported occurrence of the burrowing owl is approximately 8.3 miles northwest from the project area in non-native annual grassland. Potential nesting and wintering annual grassland habitat has low

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suitability for burrowing owl in the project site. However, there are no confirmed breeding records within the vicinity of the site. Burrowing owl was not observed in the project area during the 2021 and 2022 surveys (Althouse and Meade 2022a)” and no mitigation measures were proposed for this species. As noted in the RDEIR, as there is potential BUOW nesting and overwintering habitat on the Project site, and individuals are known to migrate or overwinter within the Project vicinity, CDFW recommends the following:

### **Recommended Mitigation Measure 1: BUOW Pre-construction Surveys**

CDFW recommends that focused surveys, following the 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report) (CDFG 2012), be conducted the survey season immediately prior to construction. Please note that the 2012 Staff Report necessitates multiple surveys prior to the initiation of Project activities.

### **Recommended Mitigation Measure 2: 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 3: 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 RDIER states on page 260 that, “Crotch’s bumble bee were identified onsite during the 2023 and 2024 surveys. While the individuals were identified foraging, there is insufficient data to determine whether the species utilizes the project site for nesting (Psomas 2024)”. The RDEIR proposes mitigation measure 3.13, to ensure no take of Crotch’s bumble bee (CBB) would occur, which necessitates staging away from suitable CBB habitat, removing CBB habitat outside of the breeding season, and incorporating a preconstruction survey approximately three weeks prior to ground disturbance. As CBB

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were documented within the Project site during surveys, suitable foraging and nesting habitat is present in the Project site, and the DEIR notes that insufficient data was gathered to determine whether the species may also nest within the Project site, CDFW strongly recommends the Project proponent consult with CDFW 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.

In addition to the recommendation above, CDFW would also like to note that Mitigation Measure (MM) 3.13b requires that Project staging areas be situated at least 15 feet away from suitable CBB habitat. CDFW recommends increasing this distance to 50 feet to avoid potential impacts to CBB and/or their nests.

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

**Huer Huero Creek:** Mitigation measure 3.1 states, "Prior to issuance of grading, demolition, or tract improvement permits, or prior to any vegetation removal or ground disturbance activities in or within 100 feet of Huer Huero Creek or oak woodland habitat, the Applicant shall retain a City of Paso Robles (City)-approved biologist to monitor grading/ground-disturbing activities located within and directly adjacent to Huer Huero Creek and oak woodlands to ensure the avoidance of significant indirect impacts, such as sedimentation and invasive plant material introduction". CDFW concurs with having an approved biologist monitor Project activities near Huer Huero Creek but recommends increasing the monitoring distance from 100 feet to 150 feet. It is also recommended that staging sites be sited to be more than 150 feet from all streams.

**Lake and Streambed Alteration:** The RDEIR notes that multiple streams, including the Huer Huero Creek, may be impacted by Project activities. 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; (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 CEQA document approved for the Project

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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.

**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.

To evaluate Project-related impacts on nesting birds, CDFW 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.

### **California Natural Diversity Database**

Please note that the California Natural Diversity Database (CNDDDB) is populated by voluntary submissions of species detections. As a result, species may be present in

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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/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project area.

## **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, Section 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 CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to 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 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, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

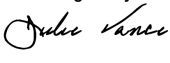
## **CONCLUSION**

CDFW appreciates the opportunity to comment on the RDEIR to assist the City of Paso Robles in identifying and mitigating Project impacts on biological resources.

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>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or [Evelyn.Barajas-Perez@Wildlife.ca.gov](mailto:Evelyn.Barajas-Perez@Wildlife.ca.gov).

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Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

ATTACHMENT

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## **REFERENCES**

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation.  
California Department of Fish and Game, Sacramento, California, USA.

**Attachment 1**

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

**PROJECT: (RDEIR) The Landing Paso Robles Majestic Realty Co. (Project)**

**SCH No.: 2021050487**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<b><i>Before Disturbing Soil or Vegetation</i></b>	
Burrowing Owl ( <i>Athene cunicularia</i> )	
<b>Recommended Mitigation Measure 1:</b> BUOW Pre-construction Surveys	
<b>Recommended Mitigation Measure 3:</b> BUOW Take Authorization	
<b><i>During Construction</i></b>	
Burrowing Owl ( <i>Athene cunicularia</i> )	
<b>Recommended Mitigation Measure 2:</b> BUOW Avoidance Buffer	