



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



October 27, 2022

Kylie Hensley
County of San Luis Obispo Department of Planning & Building
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San Luis Obispo, California 93408-2040
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**Subject: Hearing for Paso Basin Land Use Planting Ordinance (Planting Ordinance)
Program Environmental Impact Report (PEIR)
State Clearinghouse No. 2021080222**

Dear Ms. Hensley:

The California Department of Fish and Wildlife (CDFW) is providing the following comments to the County of San Luis Obispo Department of Planning and Building (County) for the consideration at the upcoming hearing scheduled by the County on October 27, 2022, for the purpose of approving the Paso Basin Land Use Planting Ordinance (Planting Ordinance). The Planting Ordinance would allow the County to continue exercising its land use authority to regulate planting of production agriculture irrigated from groundwater wells within the 313,661-acre Paso Basin Land Use Management Area in northeastern San Luis Obispo County, after the termination date of the existing agricultural offset requirements. The Planting Ordinance would allow an exemption for farms to plant irrigated crops that were not able to be planted under the existing agricultural offset requirements. The proposed ordinance would require a planting permit or exemption verification for new or expanded planting of crops irrigated from groundwater wells. Issuance of planting permits would be considered ministerial and would not require discretionary actions or further California Environmental Quality Act (CEQA) review. The proposed ordinance would be in effect from January 31, 2023, to January 31, 2045, for a total of 22 years.

CDFW provided comments and recommendations on both the Notice of Preparation and the Draft PEIR. Impacts disclosed in the Final PEIR include those caused directly by conversion of natural areas to irrigated crops, and indirectly through erosion and water quality impacts related to agricultural practices. The Final PEIR reiterates that potential impacts to special status species would be significant and unavoidable, even with compliance with regulatory frameworks that include Fish and Game Code and other State, Federal, and local jurisdictions. CEQA Guidelines section 15088(c) states that conclusory statements (by the lead agency) unsupported by factual information will not suffice. The Final PEIR does not adequately address CDFW's prior comments and CDFW therefore recommends against the County approving the Planting Ordinance and certifying the Final

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PEIR at this time. Instead, CDFW recommends recirculation of the PEIR with adequate biological impact analyses and appropriate mitigation measures incorporated, that address the items below:

The Final PEIR concludes in Section 8.4, Responses 17.4 and 17.5 that mitigation feasibility to prevent impacts to sensitive species and habitats, including riparian and wetland habitats, is limited due to the ministerial permitting approval authorized by the Planting Ordinance. In addition, due to the size of area covered by the Planting Ordinance (i.e., 313,661 acres), biological surveys of the entire project area were not feasible (Section 8.4, Response 17.9). The Final PEIR concludes that CDFW's recommended mitigation measures are not feasible and that there are no other feasible mitigation measures available to reduce impacts to sensitive habitats. CDFW disagrees with this conclusion, and continues to recommend that the avoidance and minimization described for special status species in prior comments to the County be included as mitigation measures and required Conditions of Approval, for the per-activity identification of habitat for and the potential for presence of species on a site and the corresponding avoidance, minimization, and mitigation for impacts. The Final PEIR indicates (Page 4.3-15) that the Planting Ordinance would be required to comply with regulatory frameworks including CESA and Fish and Game Code; while the Final PEIR relies on compliance with State laws to reduce impacts, it does not describe a process or use mitigation measures to require activities performed under the Planting Ordinance to demonstrate compliance with CESA or Fish and Game Code.

The Final EIR claims in Response 17.4 that the Planting Ordinance is not within the range of the State candidate for endangered listing Crotch's bumble bee (*Bombus crotchii*) and the federal and State threatened California tiger salamander (*Ambystoma californiense*). The area of the Planting Ordinance is within the range of both species and there are known occurrences and for Crotch's bumble bee (CDFW 2022) (Hatfield et al 2014) (USFWS 2017). CDFW recommends modifying the analysis to include both species, for which incidental take would require permitting pursuant to Fish and Game Code section 2081, subdivision (b). Absent the inclusion and disclosure of impacts to and potential take of these species, issuance of an Incidental Take Permit, which constitutes a project under CEQA, may require subsequent CEQA analysis.

Final PEIR Response 17.5 addresses prior CDFW comments that Mitigation Measure BIO-1 is insufficient to prevent impacts to sensitive habitats, including riparian and wetland habitat. The Final PEIR states that although Mitigation Measure BIO-1 would require setbacks to proposed planting areas of at least 50 feet from the edge of riparian vegetation and wetland areas to avoid direct impacts to these areas, even with implementation of these setbacks, direct impacts to sensitive habitats would remain significant and unavoidable. The County does not provide sufficient information to describe how 50-foot buffers or setbacks would be sufficiently protective to avoid or minimize erosion, sedimentation, and other impacts to water quality and stream or wetland morphology, and related indirect impacts to fish and wildlife species. It also does not describe what constitutes "riparian vegetation" or how

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buffers would be implemented for streams where such vegetation may not be present or has been previously reduced or removed.

CDFW commented that the Draft PEIR did not address impacts to aquatic species, including steelhead – south central California coast distinct population segment (DPS) (*Oncorhynchus mykiss irideus*). The Final PEIR states (Response 17.8) that there is no evidence of any connections between groundwater and surface waters within the Planting Ordinance boundary, and therefore, surface water dependent species such as steelhead would not be affected by groundwater drawdown, and mitigation to reduce impacts to water-dependent species from groundwater drawdown is not required. In addition, the Final PEIR concludes that the Planting Ordinance, as well as cumulative projects, could result in significant and unavoidable direct impacts to special status species, including steelhead. Because steelhead are federally listed as threatened, CDFW recommends that the Planting Ordinance address compliance with the Federal Endangered Species Act for steelhead and other federally listed species that may be impacted by implementation of the Planting Ordinance.

The Final PEIR Master Response 8 – Biological Resources Impact Analysis (Section 8.3.8, beginning on Page 8-7) states that regulatory compliance for projects that may be subject to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.) will be left to the individual project applicants. Given that the County has concluded that biological impacts to sensitive species are significant and unavoidable, and regulatory compliance is not included as an enforceable condition of the Planting Ordinance, CDFW recommends that the County consider alternatives to ensuring compliance with CESA and Fish and Game Code, as through a Natural Communities Conservation Plan or a Master Streambed Alteration Agreement, prior to implementation of the Planting Ordinance.

CDFW appreciates the opportunity to comment on the Project to assist the County in identifying and mitigating the Project's impacts on biological resources. If you have questions regarding this letter, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 580-3202 or by email at Annette.Tenneboe@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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cc: Office of Planning and Research, State Clearinghouse, Sacramento

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