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Subject: Avila Beach Golf Resort Phased Expansion Development Plan and Coastal Development Permit Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No: **2022120057**

Dear Nicole Ellis:

The California Department of Fish and Wildlife (CDFW) received a NOP for a draft Environmental Impact Report (DEIR) from the County of San Luis Obispo (SLO) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code. CDFW appreciates the County granting a short extension to the timeline to reply to the NOP for this Project and hopes that this letter will help the County to adequately scope the DEIR.

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,

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

subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id*., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Water Rights: The capture of unallocated stream flows is subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code § 1200 et seq. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights and petition processes to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance, and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

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).

Lake and Streambed Alteration: San Luis Obispo and Harford Canyon Creeks flow through the Project site. Any vegetation and/or ground-disturbing or water diversion activities that have the potential to impact San Luis Obispo or Harford Canyon Creeks may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. This includes any direct pumping of water from these creeks or pumping of "groundwater", which is subsurface stream flow. Fish and Game Code section 1602 requires the project proponent 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; or (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 in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

PROJECT DESCRIPTION SUMMARY

Proponent: ABR Property L.P. – Kirk Consulting, Agent

Objective: Evaluate a request by ABR Property L.P. for a phased Development Plan/Coastal Development Permit for the construction of various hotel accommodations and related facilities including various sized temporary events (general expansion of visitor-serving and recreational uses on site). The Avila Beach Resort Expansion project (ABR expansion project or Project, hereafter) includes, but is not limited to, a request for an exception to allow additional business and access signage areas, and a request to modify the road improvement standards along Avila Beach Drive. The Development Plan application will also concurrently amend and update the San Luis Bay Estates Master Development Plan to provide consistency between the Master Development Plan and the San Luis Bay Coastal Area Plan.

The Project will result in the disturbance of approximately 17 acres on the 170-acre site with approximately 14,700 cubic yards of cut and 18,100 cubic yards of fill.

Location: The Avila Beach Golf Resort (Resort) is situated immediately north of Avila Beach Drive, adjacent to the community of Avila Beach. The property is situated at the edge of San Luis Bay, where San Luis Obispo Creek flows into the Pacific Ocean. It is bounded to the north and east by steeper hillsides and residential development known as San Luis Bay Estates, and Avila Beach Drive and the community of Avila to the south and west. The Project site is in the Recreation land use category, in the community of Avila Beach and in the San Luis Bay Coastal planning area. APNs include: 076-181-032, 076-181-039, 076-181-061, and 076-205-001.

Per Project information, the majority of the site consists of existing maintained turf grass associated with the golf course and ornamental landscaping, with portions of the site containing natural vegetation communities (terrestrial and aquatic vegetation) such as annual brome grassland, arroyo willow thicket, remnant California sycamore woodland, coastal scrub (California sagebrush-black sage scrub, coyote brush scrub, and Menzies's golden bush scrub), coast live oak woodland, freshwater emergent wetlands, ice plant mat, pickleweed mats, and purple/valley needlegrass grassland.

The site has been significantly altered from its natural state by development of the Resort and associated golf course, which was constructed in the 1960's. In addition to San Luis Obispo Creek, one intermittent blue line drainage flows south across the Project site, bisecting the golf greens in the western portion of the survey area. This drainage is unnamed on USGS topographic maps but is referred to locally and in the County of San Luis Obispo, Basic Scoping Document – Preliminary Environmental Checklist for the Avila Beach Resort Phased Expansion Project as Harford Canyon Creek. The lower portion of San Luis Obispo Creek and its confluence with Harford Canyon Creek is currently accessed for recreational purposes by the public. This includes regular use of the existing Bob Jones Trail which intersects lower San Luis Obispo Creek and provides direct access to Avila Beach.

Surrounding land use areas include open space, agriculture, and residential suburban/grazing land, industrial, recreation, commercial retail, the San Luis Bay Inn, single and multi-family residences, and the Cal Poly Pier.

Timeframe: Not specified

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County of San Luis Obispo 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 document for this Project.

The NOP indicates that the DEIR for the Project will consider potential environmental effects of the proposed Project to determine the level of significance of the environmental effect and will analyze these potential effects to the detail necessary to make a determination on the level of significance. The DEIR will also identify and evaluate alternatives to the proposed Project. When a DEIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation.

Special-Status Species

Based on aerial imagery, and species occurrence records from the California Natural Diversity Database (CNDDB, 2022), the proposed Project site and/or surrounding area is known to and/or has the potential to support special-status species, and these resources need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the Federally threatened (FT) and State species of concern (SSC) California red-legged frog (*Rana draytonii*), the FT steelhead South Central California DPS (*Oncorhyncus mykiss irideus* pop. 9), the Federal Candidate (FC) and SSC Monarch butterfly (*Danaus plexippus*) (overwintering population), the SSC Tidewater Goby (*Eucyclogobius newberryi)*, and the state candidate endangered Western bumble bee *(Bombus occidentali*s). Plants included are the California Rare Plant Rank 1B.1 (Plants rare, threatened, or endangered in California and elsewhere; seriously threatened in California) Mesa horkelia (*Horkelia cuneata var. puberula*), California Rare Plant Rank 1B.2 (Plants rare, threatened, or endangered in California and elsewhere, fairly threatened in California) black-flowered figwort (*Scrophularia atrata*), Hoover's bent grass (*Agrostis hooveri*), Nipoma mesa ceanothus (*Ceanothus impressus var. nipomensis*), and Santa Margarita manzanita (*Arctostaphylos pilosula*), and the California Rare Plant Rank 1B.3 (Plants rare, threatened, or endangered in California and elsewhere; not very threatened in California) Umbrella larkspur (*Delphinium umbraculorum*).

Unlisted Species

Species of plants and animals do not need to be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T as specified in the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, Section 15380), we recommend it to be fully considered in the environmental analysis for the Project. The striped mullet (*Mugil cephalus*) is known to occur in the vicinity of the Project site and San Luis Obispo creek throughout the Project site is known to have a robust population of this species of anadromous fish. They have the potential to be directly and/or indirectly impacted by the Project and should be addressed in the DEIR.

Federally Listed Species

CDFW also recommends consulting with the USFWS on potential impacts to Federally listed species, specifically, but not limited to, the FT steelhead-south-central California coast DPS, California red-legged frog, and tidewater goby, and the FC and State SSC monarch-California overwintering population. 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 to comply with FESA is advised well in advance of any ground disturbing activities.

California Red-Legged Frog (CRLF)

CRLF have been observed near the Project site per CNDDB records. Because suitable habitat is present within the Project site and adjoining area, CDFW recommends that a qualified biologist conduct protocol surveys for CRLF as part of the biological technical studies conducted in support of the CEQA document and, regardless of the results of the initial surveys, repeated within 48 hours prior to commencing work (two-night surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (USFWS, 2005) to determine if CRLF are within or adjacent to individual project sites.

If any CRLF are found during the initial protocol surveys conducted as part of the biological technical studies, the preconstruction surveys, or at any time during construction, CDFW recommends that we be contacted to discuss a relocation plan for CRLF. In addition, if CRLF are found at any time during construction, CDFW recommends that construction cease immediately, that the CRLF be allowed to move out of harm's way on its own, and that CDFW be contacted to discuss appropriate measures to implement to reduce harm.

CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 through March 31). If ground-disturbing activities must take place between November 1 and March 31, CDFW recommends that a qualified biologist monitor construction activity daily.

The proposed plans for the formation of a man-made lake may have a detrimental indirect impact to local CRLF populations. This man-made lake will produce ideal habitat for the American bullfrog, a known predator to the CRLF and other native species and could potentially cause a negative impact to the CRLF population historically found at the Project site. The current pond located at the Project site is filled by a well on ABR property, which pulls water from San Luis Obispo Creek and is not currently permitted by CDFW to do so. If the man-made lake were to be filled with the same water source it would decrease water availability in SLO creek, leading to a reduction of available habitat for CRLF and other fish and wildlife species which depend on San Luis Obispo Creek water.

Steelhead South-Central California Coast (Steelhead)

The Project site is adjacent to San Luis Obispo Creek, which is known as one of the southernmost streams with viable steelhead habitat (Cannata, 1991). Historically, an estimated 94,000 steelhead spawned in streams of the Central California coast in the early 1960s. Steelhead numbers have been in decline since the 1960's and most coastal streams have remnant runs of 500 fish or fewer (Center for Biological Diversity, 2021). Steelhead have been observed in San Luis Obispo Creek approximately 0.6-mile upstream of the Project area per CNDDB records (CDFW, 2022) and, although the creek only supports a fraction of historical numbers, the creek is known to contain annual runs of spawning steelhead each winter.

CDFW recommends Project activities avoid all in-water work and that any work that could be directly or indirectly disturbing to San Luis Obispo Creek be limited to less critical times of the year (June-February) to avoid impacts to spawning riffles or holding pools. CDFW also recommends that the County include in the DEIR a detailed analysis of how the Project, which is proposed entirely within the active floodplain of San Luis Obispo creek, will affect steelhead both directly, indirectly, and cumulatively as a result of the loss of floodplain area, an increase in hardened surfaces and associated deleterious runoff, and the functions the floodplain provides for steelhead.

The proposed plans for the formation of a man-made lake will likely affect San Luis Obispo Creek water levels and therefore may have a detrimental impact to local Steelhead populations. At present, San Luis Obispo Creek water gets pulled from a well on ABR property and there is no CDFW permit to do so. Uncertainty surrounding the baseline water use and associated authorizations, as well as any additional water requirements for the Project, as well as resulting potential impacts to both water quantity and quality within San Luis Obispo creek should be studied in detail and disclosed in the DEIR. This is especially critical due to the potential Project related impacts to water quality and quantity within San Luis Obispo creek and how that will affect steelhead in all water year types. Plans for water diversion for all Project activities, including to sustain a new man-made lake would likely result in a potentially unmitigable significant impact to adult and juvenile Steelhead, particularly during periods of low-flow in the creek, as it would decrease flows in San Luis Obispo Creek.

CDFW recommends that the DEIR include a detailed analysis of how the Project will directly, indirectly, and cumulatively impact steelhead in San Luis Obispo Creek and include recommended mitigation measures to offset and/or reduce potential impacts to less than significant. In particular, CDFW is concerned about the new point-sources of pollution from the impervious surfaces proposed as a part of the Project, the existing and additional water use from the creek, and the overall Project impacts on the creek and estuary salinity and temperature, creek flows, the significant reduction of the available floodplain in the lower reaches of the creek, and the associated hydrologic and water quality impacts that will result. At a minimum, the DEIR should identify minimum

instream flows, in consultation with CDFW and the State Water Resources Control Board (SWRCB). These minimum instream flows would inform CDFW and SWRCB required bypass flows, meaning minimum stream flows required to be maintained at all times in San Luis Obispo Creek downstream of all Project water diversions. This means that under certain stream circumstances (low flow conditions, drought conditions, etc.) that stream diversion would be prohibited, and that a method for real time diversion reporting as well as stream flows downstream of the Project (e.g. stream gage installation and maintenance) would be required. As a result of the diversion limitations that would be required to be protective of fish and wildlife, as well as overall stream flow limitations in dry years, the DEIR must identify sources of Municipal and Industrial (M&I) water that is independent of San Luis Obispo Creek surface and subsurface flows. Lastly, given climate change and the predictions that hotter and drier weather in the State could diminish our water supplies by up to 10% by the year 2040 (State of California, 2022), creation of a new manmade lake seems ill advised and not the highest and best use for that public resource.

Tidewater Goby

There is a potential for tidewater goby to be present within and adjacent to the Project site. Results from the CNDDB document tidewater goby approximately 0.8 miles upstream of the Project site (CDFW, 2022). Tidewater goby is endemic to California and range from the border of Oregon to Northern San Diego County. In the 1980's scientists discovered that tidewater gobies were quickly disappearing from several locations they had historically inhabited, and it was quickly Federally listed as endangered. Their habitat is restricted to coastal brackish water which typically encompass estuaries and coastal lagoons. Tidewater Gobies will migrate into tributaries with some documentation that they will go as far as 3 miles upstream of the estuary (USFWS, 2022). CDFW recommends Project activities avoid all in water work, and that the minimum instream flow analysis recommended above take Tidewater goby life history and associated water and habitat needs into consideration. CDFW should be consulted to identify and implement appropriate avoidance and minimization measures to avoid any impacts to this species.

CDFW recommends that the DEIR include a detailed analysis of how the Project will directly, indirectly, and cumulatively impact tidewater goby in San Luis Obispo creek and include recommended mitigation measures to offset and/or reduce potential impacts to less than significant. In particular, CDFW is concerned about the new point-sources of pollution from the impervious surfaces proposed as a part of the Project, the existing and additional water use from the creek, and its and the overall projects impacts on stream flows, the creek and estuary salinity and temperature, and the significant reduction of the available floodplain in the lower reaches of the creek and the potential hydrologic and water quality impacts that will result.

Western Bumble Bee (WBB)

CNDDB records indicate that WBB have been documented to occur within the vicinity of the project site (CDFW, 2022). WBB primarily nest in late February through late October underground in abandoned small mammal burrows but may be found under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al., 2014; Hatfield et al., 2015). Overwintering sites utilized by WBB mated queens include soft, disturbed soil (Goulson, 2010), or under leaf litter or other debris (Williams et al., 2014). Therefore, potential ground disturbance and vegetation removal associated with project implementation may significantly impact local WBB populations.

WBB was once commonly found in western United States, Canada, North Dakota, and throughout Alaska; however, it now appears to be absent from most of these areas as there has been a 93 percent decline in occupancy in the last two decades.

CDFW recommends that a qualified biologist conduct focused surveys for WBB and their requisite habitat features as part of the biological technical studies conducted in support of the CEQA document to evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from this Project.

If surveys cannot be completed, 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 WBB prior to or during project implementation warrants consultation with CDFW to discuss how to avoid take. If WBB is identified during surveys, consultation with CDFW is warranted to determine if the project can avoid take. If take cannot be avoided, take authorization prior to any ground- disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

Monarch Butterfly (MOBU): Overwintering Population

MOBUs have been observed per CNDDB 0.66 miles east from the Project. CDFW recommends that a qualified biologist conduct a habitat assessment for MOBU as part of the biological technical studies conducted in support of the CEQA document. The qualified biologist shall determine if the Project area or its immediate vicinity contains habitat suitable to support the MOBU. The qualified biologist should assess habitat following the Xerces Management Guidelines for Monarch Butterfly Overwintering Habitat (Xerces Society, 2017) or other protocols with prior approval by CDFW.

If suitable habitat for MOBU is present, CDFW recommends that surveys for MOBU be conducted by a qualified biologist as part of the biological technical studies conducted in

support of the CEQA document. Any potential habitat, particularly roosting trees, shall be marked and avoided during Project activities. CDFW recommends avoiding or minimizing the cutting or trimming of trees within core overwintering habitat except for specific grove management purposes, and/or human health and safety purposes. If necessary, management activities in MOBU habitat should be conducted between March 16th and September 14th, in coordination with a qualified biologist (Marcum and Darst, 2021).

Special-Status Plants (SSP)

CDFW recommends the Project area be surveyed for SSPs by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW, 2022). 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 recommends that the protocol be repeated over two growing and blooming seasons for each species likely to be present, to minimize effects of varying moisture regimes influencing results and maximize detection of rare plants. It is recommended that each series of surveys be done in one consecutive year focusing on doing early season, mid-season, and late season surveys to record all potential plant species in the area.

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

Editorial Comments and/or Suggestions

CDFW requests that the DEIR fully identify potential impacts to biological resources, including the above-mentioned species. To adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol level surveys, and to identify any Project-related impacts under CESA and other laws and regulations protection biological species.

CDFW recommends the DEIR address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than

significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols).

Waters of the State and U.S.: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures this Project could result in permanent and temporary impacts to Waters of the State from storm water runoff and construction-related erosion. Potential impacts to the wildlife resources that utilize watercourses in the project area include the following: increased sediment input from road or structure runoff; construction-related activity runoff associated with project-related activities and implementation; permanent, point-source water quality impacts; and/or impairment of both aquatic and terrestrial wildlife movement through the area. The Regional Water Quality Control Board and United States Army Corps of Engineers (USACE) also have jurisdiction regarding discharge and pollution to Waters of the State.

Lake and Streambed: The Project is 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; or (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 in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note that CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement. If inadequate, or no environmental review, has occurred for the Project activities that are subject to notification under Fish and Game Code 1602, CDFW will not be able to issue the Final LSAA Lake and Streambed Alteration Agreement until CEQA analysis for the Project is complete. This may lead to considerable Project delays.

Water Rights: CDFW recommends the DEIR include a detailed analysis of the existing and proposed water rights and water entitlements that pertain to the Project, including whether any applications or change petitions will be filed. As stated previously, CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for significant, unmitigable impacts to sensitive species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

CDFW is particularly concerned with water rights as they pertain to the existing well currently being used to pump water from San Luis Obispo creek and into the ponds on the golf course. This diversion is not currently permitted by CDFW to divert stream flows, and there is therefore no bypass flows or other protective measures being implemented for fish and wildlife in association with this diversion. In addition, the extent to which this existing diversion is affecting stream flows and water quantity downstream of the Project is unknown at this time; a robust hydrology analysis should be included in the EIR that considers existing impacts as well as any changed circumstances. CDFW is also concerned about potential Project related changes to the proposed fish passage project to modify the Marre weir so that the weir can appropriately pass both adult and juvenile steelhead. The Project and its likely associated impacts to hydrologic functioning and water quantity in San Luis Obispo creek could have an indirect effect on the modeling used to develop the Marre weir fish passage project that has been under development and study for some time. Fish passage projects, in general, require intensive hydrologic modeling to predict low and high flow water levels to inform the design of the project and help to ensure the project will benefit fish. This important fish passage project is critical to the recovery of steelhead and CDFW recommends that coordination with the proponents of the Marre weir fish passage project begin immediately so that unanticipated impacts to this important restoration project do not result.

Water Pollution: Both the construction and the operations of the Project have the potential to result in significant, unmitigable water quality impacts to San Luis Obispo Creek. Construction related pollutants and new, permanent point-source pollution sources will likely result in further degradation of water quality in the creek and in impacts to the biological resources dependent upon it. For the sensitive species whose habitat is dependent upon the creek, exposure to harmful pollutants would persist and likely increase as the proposed Project is on a floodplain that historically floods on a regular basis becoming part of San Luis Obispo creek during high flow events. Proposed impervious surfaces, including parking lots, will create a permanent, direct point-source of pollution to the creek that is likely unmitigable. This problem is exacerbated by the proposed plans of constructing a parking lot near the water source increasing exposure of pollutants in nearby sensitive habitat.

Climate Change Adaptation: Climate change is quickly altering the global landscape, especially through sea-level rise. Since 1880 the global mean sea level has risen about 9 inches, and it is predicted that from 2020 to 2050 sea level will rise another 12 inches or more (Lindsey, 2022). Sensitive habitats and infrastructure near the ocean will see negative impacts first. As the sea level rises, development and infrastructure in locations like that of the proposed Project is likely to slowly be submerged in places where historically it was not. San Luis Obispo Creek, in turn, would be exposed to an unknown number of pollutants. This would cause significant, unmitigable water quality impacts and negatively affect the aquatic and terrestrial wildlife that depend on it.

CDFW recommends analyzing the effect sea level rise will have on the Project site, as climate change is a critical factor to consider. CDFW recommends that a detailed sea level rise analysis be completed for this Project and that predictive modeling be used to gauge whether this development in the floodplain of the lower, tidally influenced, portion of San Luis Obispo creek is consistent with plans for coastal managed retreat and other strategies to mitigate the impacts of sea level rise on infrastructure. If impacts to the proposed Project as a result of sea level rise are reasonably foreseeable, CDFW recommends that the overall cumulative impacts analysis include potential projects to mitigate the impacts of sea level rise on it. It is likely that armoring of the creek banks in this area, proposing walls to channelize the creek, and/or other methods to contain the creek during normal and/or king tide events will be reasonably foreseeable. Any future projects to mitigate the impacts of sea level rise on the proposed Project should be considered connected actions and included in the DEIR as they would contribute to additional negative impacts on the creek and the biological and terrestrial species dependent on the creek and its habitat for survival.

Stream and Wetland Mapping: CDFW recommends that detailed stream and floodplain mapping and a wetland delineation be conducted by a qualified hydrologist to determine the baseline location, extent, and condition of streams (including the floodplain) and wetlands within and adjacent to the Project area. Please note that while there is overlap, State and federal definitions of wetlands differ, and complete stream mapping commonly differs from delineations used by the United States (U.S.) Army Corps of Engineers specifically to identify the extent of Waters of the U.S. Therefore, it is advised that the wetland delineation identify both State and federal wetlands in the Project area as well as the extent of all streams including floodplains, if present, within the project area. CDFW advises that site map(s) depicting the extent of any activities that may affect wetlands, lakes, or streams be included with any Project site evaluations, to clearly identify areas where stream/riparian and wetland habitats could be impacted from Project activities.

Aquatic Ecosystem Monitoring and Mitigation: CDFW recommends that the DEIR include requirements to identify, evaluate, and monitor all aquatic ecosystems and fish and wildlife resources therein that would be affected by Project activities related to surface water diversion, and develop a plan to offset losses caused by changes in hydrology associated with the Project. The plan should address mitigation for impacted habitat value and function, to achieve a minimum no net loss of these habitats, consistent with California Fish and Game Commission policy on Wetlands Resources.

Nesting birds: Per Google and CNDDB aerials along with Google Street View, the Project site contains numerous trees within/adjacent to the two creeks within the proposed Project boundaries. While no tree removal was mentioned in the NOP, CDFW encourages that Project construction occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is

responsible for ensuring that construction and operations of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct an assessment of nesting habitat during biological surveys in support of the Project's CEQA document and quantify potential direct and indirect impacts to potential nesting habitat in the DEIR. CDFW then recommends that a qualified biologist conduct pre-construction surveys 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 recommends that both the habitat assessment and pre-construction surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project, both directly and indirectly. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. If nesting birds are discovered during pre-construction surveys, then prior to initiation of construction activities, CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once construction begins, 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 that 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 compelling biological or ecological reason to do so, such as when the construction areas 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.

Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document 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 should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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 California Natural Diversity Database (CNDDB, 2022). The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

If it is determined that the project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the project to assist the County of San Luis Obispo in identifying and mitigating the project's 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). If you have any questions, please contact Evelyn Barajas-Perez, Environmental Scientist, at

the address provided on this letterhead, or by electronic mail at Evelyn.Barajas-Perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

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Amanda Montgomery (Amanda.Montgomery@waterboards.ca.gov)
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