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August 30, 2024

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**Subject: City of Atascadero Comprehensive 2045 General Plan Update (Plan)
Notice of Preparation (NOP)
SCH No.: 2024070598**

Dear Kelley Gleason:

The California Department of Fish and Wildlife (CDFW) received a NOP to prepare a Draft Environmental Impact Report (DEIR) from the City of Atascadero for the Plan 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 Plan that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Plan 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, §§ 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 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, § 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 project's tiered from this Plan may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future project's tiered from this Plan may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 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).

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

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

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

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PROJECT DESCRIPTION SUMMARY

Proponent: City of Atascadero

Objective: The Plan is a comprehensive update to the existing 2025 General Plan that will guide growth in Atascadero over the next 20 years through the year 2045. The Plan would define a community vision, provide the legal foundation for local government decision-making, express policy direction in regard to the physical, social, economic, cultural, and environmental character, serve as a comprehensive guide for making decisions regulating land use, circulation, environmental management, parks and recreation, housing, noise, public health, and safety, and provide citizens the opportunity to participate in the planning and decision-making process.

Location: The Plan area is the City of Atascadero in San Luis Obispo County.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Atascadero in adequately identifying and/or mitigating the Plan's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document for this Plan.

The NOP indicates that the DEIR for the Plan will consider potential environmental effects of the proposed Plan to determine the level of significance of the environmental effects 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 Plan. 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. Many special-status plant and animal species in the proposed Plan area have been reported to the California Natural Diversity Database (CNDDDB) (CDFW 2024). The following species should be considered as part of the DEIR that will be drafted for this Plan:

The State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State fully protected golden eagle (*Aquila chrysaetos*), the State and federally endangered least bell's vireo (*Vireo bellii pusillus*), and white-tailed kite (*Elanus leucurus*), the State candidate listed endangered Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis*), the State species of special concern American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), purple martin (*Progne subis*), coast horned lizard (*Phrynosoma blainvillii*), and northern California legless lizard (*Anniella pulchra*), the State species of special concern and federally proposed threatened southwestern pond turtle (*Actinemys pallida*) and

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California red-legged frog (*Rana draytonii*), the State species of special concern lesser slender salamander (*Batrachoseps minor*), the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*), the State species of special concern Pacific lamprey (*Entosphenus tridentatus*) and Monterey hitch (*Lavinia exilicauda harengus*), the State species of special concern and federally threatened steelhead – south-central California coast Distinct Population Segment (DPS) (*Oncorhynchus mykiss irideus* Pop. 9), the California Rare Plant Rank (CRPR) 1B.2 Eastwood's larkspur (*Delphinium parryi ssp. eastwoodiae*), the CRPR 1B.1 mesa horkelia (*Horkelia cuneata var. puberula*), the CRPR 1B.3 La Panza mariposa-lily (*Calochortus simulans*), and the CRPR 1B.2 Miles' milk-vetch (*Astragalus didymocarpus var. milesianus*), most beautiful jewelflower (*Streptanthus albidus ssp. peramoenus*), Ojai fritillary (*Fritillaria ojaiensis*), San Luis Obispo owl's-clover (*Castilleja densiflora var. obispoensis*), Santa Margarita manzanita (*Arctostaphylos pilosula*), shining navarretia (*Navarretia nigelliformis ssp. radians*), straight-awned spineflower (*Chorizanthe rectispina*), and yellow-flowered eriastrum (*Eriastrum luteum*).

Federally Listed Species

CDFW recommends projects tiered from this Plan consult with the U.S. Fish and Wildlife Service (USFWS) on potential impacts to federally listed species. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

Cumulative Impacts

Given that a Plan serves primarily as a planning tool and that future project-level CEQA documents are expected to be tiered from it, CDFW recommends that a cumulative impact analysis be conducted for all potential biological resources that will either be significantly or potentially significantly impacted by implementation of the this Plan, including those impacts that are determined to be less than significant with mitigation incorporated for those resources that are rare or in poor or declining health and will be impacted by any future project, even if those impacts are expected to be relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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California Endangered Species Act

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to the California Endangered Species Act (CESA). In the event that species listed under CESA are detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid "take," or if avoidance is not feasible, to acquire a State ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities. In addition, CDFW advises that mitigation measures for the CESA listed species be fully addressed in the CEQA document prepared for any future project tiered from this Plan.

CDFW therefore recommends that the DEIR for this Plan include information related to these requirements and advises that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to CESA listed species may require the need to obtain a 2081 ITP.

Lake and Stream Alteration

Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. 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 Fish and Game Code section 1602 requires project proponents 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 (LSA) Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

CDFW therefore recommends that the DEIR for this Plan include information related to these requirements of Fish and Game code and advise that projects tiered from this Plan retain a qualified biologist to determine if potential impacts to streams may require the need to obtain a 1600 LSA Agreement.

Botanical Surveys

CDFW recommends that the DEIR for this Plan include a measure requiring that each project site for projects implemented within the Planning area be surveyed by a qualified botanist for any possible special-status plants following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural

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Communities” (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) during biological technical studies completed in support of the future CEQA documents tiered from this Plan. CDFW recommends that the plant surveys be floristic and, if necessary, utilize known reference sites for special-status plants in order to provide a high level of confidence in the effort and results. If a State or federally listed plant species is identified during botanical surveys, it is recommended that consultation with CDFW and/or the USFWS be conducted to determine permitting needs.

Nesting birds

CDFW recommends that all projects tiered from this Plan occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 through September 15), each future project applicant is responsible for ensuring that implementation of their project does not result in a violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate future project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct an assessment of nesting habitat during biological surveys in support of each project’s CEQA document, and then conduct pre-activity 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 also recommends that surveys cover a sufficient area around each future project site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to 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 each future 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

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support any variance from these buffers and notify CDFW in advance of implementing a variance.

CEQA Alternatives Analysis

CDFW recommends that the information and results obtained from the cumulative impacts analysis conducted as part of this Plan's CEQA document be used to develop and modify the Plan's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. Please note that for all future projects tiered from this Plan, that when efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

CNDDB

Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB does not mean a species is not present. All project's tiered from this Plan should adequately assess any potential project-related impacts to biological resources by ensuring biological surveys are conducted by a qualified wildlife biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology as 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, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during surveys to the CNDDB. 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

The Plan, 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

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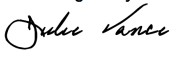
operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Atascadero in identifying and mitigating this Plan'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>). 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.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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REFERENCES

California Department of Fish and Wildlife. 2024. Biogeographic Information and Observation System (BIOS). Accessed 26 August 2024.
<https://www.wildlife.ca.gov/Data/BIOS>.