

BEFORE THE HONORABLE MAYOR AND CITY COUNCIL
OF THE CITY OF ATASCADERO, STATE OF CALIFORNIA

BIODIVERSITY FIRST!, INC.,
A California Non-Profit Corporation,
Appellant

- *versus* -

CITY OF ATASCADERO
PLANNING COMMISSION,
Respondent; VSM LEASING &
RENTALS, LLC, Applicant and Real
Party in Interest; ATASCADERO
MUTUAL WATER COMPANY,
Real Party in Interest.

APPEAL BY BIODIVERSITY FIRST!, INC. OF JULY 18, 2023
DECISION OF THE ATASCADERO PLANNING
COMMISSION APPROVING A SIX (6) ACRE
RECREATIONAL VEHICLE STORAGE LOT FOR TWO-
HUNDRED SIXTY-TWO (262) VEHICLES AT 6805
SYCAMORE ROAD, ATASCADERO BE ADDED TO
EXISTING SITE APN 028-121-001

APPEAL HEARING DATE: SEPTEMBER 12, 2023
CITY COUNCIL CHAMBERS
6500 PALMA AVENUE
ATASCADERO, CALIFORNIA 93422

Submitted by Appellant
BIODIVERSITY FIRST!, INC.
3650 GILLIS CANYON
SHANDON, CALIFORNIA 93461

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Introduction/Preface

One hundred years ago, almost to the month, a newspaper in the Salinas Valley, in a community that sits astride the Salinas River, north and downstream from but much like Atascadero, reported that over a weekend members of the community had caught in a makeshift wire net stretched across the river an estimated twenty seven *tons* of fish, predominately steelhead, from the Salinas River. In large wagons, they hauled the fish to the fields where they spread their bounty - and most believed it was a divine gift - to be plowed into the earth of their fields as fertilizer. The fishery and sense of plenty seemed inexhaustible.

Fast forward to today. Atascadero is the first city and sits near the top of the Salinas River after the river originates and descends from the Los Machos Hills of the [Los Padres National Forest](#). We enjoy the freshest and cleanest water which may be a big reason the beavers thrive here and up stream and why other species including endangered ones nest near and on the periphery of the river and floodplain, witness the existing Bald Eagle nest near the Project.

It is time - long past time frankly - that we reclaim the potential bounty of the river and give it a hand up. That we stop seeing the river as a convenient waste disposal system and that we do a better job of sharing the river's gifts and bounty with our neighbors downstream. I think our ancestors - including, recently, our parents, grandparents, and great grandparents - are calling for us to do just that. The water that comes to us from the Los Machos Hills comes to us first, before it begins its almost 200 mile journey to the sea and before it

brings its bounty to more than 300,000 people who live within 5 miles of the river's path, roughly ten percent of whom reside in our City. Our relationship to our neighbors downstream is most akin to a trusteeship, that we care for it, don't degrade it, and pass it along in as good condition as we receive it.

The pending general plan update is an opportunity to make course corrections as a City. Planning - land use planning at least - is all about grouping compatible uses together and keeping incompatible uses apart. But this single land use decision is a place to start: good and needed project, wrong place. The consequent vulnerability of getting the mix and proportions wrong invites unnecessary loss, City liability, inflated insurance premiums, and damage to human and natural life and to both personal and real property..

**THE SITING OF THIS PROJECT ON OR ADJACENT TO A
DEMARCATED FLOOD PLAIN IS PROBLEMATIC AND AN
UNACCEPTABLE RISK**

There is probably no better place to start than the fact that the Project's six acre site on which 262 recreational vehicles, some having replacement values in insurance terms well into the six-figure range, will be stored, washed, serviced, and serve as garages for lithium battery bikes, camping supplies, fire starter, and the rest of the paraphilia needed for high adventures on the road, at least in part on but in any event adjacent to a designated "floodplain". Not to belabor the obvious but a floodplain is "an area of low lying ground adjacent to a river, formed mainly of river sediments and subject to flooding." Despite stretches of the River regularly running dry, the Salinas River has flooded frequently, sometimes notably for example in 1964 and 1995.³ The fact that a weather-triggered flash flood sweeps, say just 10% of the stored RVs

into the river course, battering the RV shells, and dumping propane tanks, Comet cleanser, Windex, motor fuel and lubricants, plumber's helpers, Drano, and fancy entertainment systems into the river course with a one-way ticket to Templeton or maybe Paso should not surprise us., So the river is contaminated and downstream residents and business are exposed to health hazards and property loss and hopefully no loss of limb.. Because the Applicant has good lawyers, they may have suggested the project owner require tenants to waive "flood damage". This is like a law school hypothetical: is the property owner (AMWC) liable ?, how about the City ? Or because the insurance company had anticipated with climate change more such events, there might be no - zero - compensation.

But what if instead of the relative paucity of serious floods and uncertain odds and vagaries of flash floods caused by natural or human-assisted climate conditions, the hazard is man-made. Take for example the sixty-two year old Salinas Dam built on the Salinas River, above Atascadero, in 1941 by the War Department , fully permitted and holding 23,843 acre feet of water. Possible expansion of the Salinas Dam is possible and has been widely publicized. Any failure of the Salinas Dam could have catastrophic impacts on down river communities. The age of the dam and the fact it was designed and built before much of what we now know about the plethora of local faulting was known make it one to be watched by Atascadero officials - Atascadero and its floodplain would bear the brunt of a Salinas Dam failure but the fact it is a fully engineered dam, built by the War Department, is fully permitted and regularly inspected make it less the focus of attention than its nearby unpermitted sister dam.

The second dam, below the Salinas Dam but still above Atascadero, is much more worrisome. The second dam is a non-engineered, virtually “home-made”, unpermitted dam on private property that in the 50 or more years since it was built has obstructed the river’s flow and now restrains not only hundreds of acre feet of water but mega tons of sediment. Concern over safety and environmental and water resources led to an effort a few years ago by a team of State-agency personnel and CalPoly staff, invited by the then owner and manager of the property, to devise a plan to safely remove the dam, contain some and remove other tons of sediment, Unfortunately, just a short time - weeks - before this deal to remove the hazard was to be signed off on by all parties the manager/owner of the property the dam sits on, passes. Tragic. The successors pull the plug on the whole dam removal scheme, and ordered the university to close and keep confidential its files on this project . Experts - academic-based and state employed - identify the hazard at least to necessary emergency personnel, a blow-out of the dam after a large storm launching a fusillade of water and mud down the river, wiping out almost everything in its path, from old bridges to beaver dams.

If the first order effects and impacts of a failure of one or God forbid, both dams don’t make patently obvious that the RV Storage project is likely to be in the wrong place at the wrong time, the second order effects are equally insidious. Insurance companies were slow to read the tea leaves of climate change but now, wiser, have sharply raised premiums or, like in nearby Los Osos, suspended altogether flood, fire, and seismic coverages. Imagine how these already once burned insurance companies are likely to respond to insuring \$100K+ RVs that have a virtual Sword of Damocles hanging over their and their owners’ heads simply by virtue of being tenants of this RV

storage project. Atascadero business, at least those close to the river, may also find themselves paying higher premiums or being spurned entirely. Consequences. Worst case? In three years you have a ghost town of abandoned, ransacked, tireless RVs, gaping holes in security fence, and occasional whiffs of cannabis. Skeletons of the dreams once of geezers like me. Bad idea? You think!?

Local seismic activity and weather wierding are also threats to the integrity of this dam. The City knows about the hazard, the property owner knows about the hazard. But someone forgot to tell the Planning Commission

THE CITY'S ATTEMPTED COMPLIANCE WITH CEQA IS INCOMPLETE AND ITS CLAIM UNDER AN UNSPECIFIED "CATEGORICAL EXEMPTION" VAGUE AS TO CONSTITUTE A FAILURE TO COMPLY WITH THE LETTER AND INTENT OF CEQA

This project was given a categorical exemption from CEQA according to the 6-20-23 Planning Commission Staff Report. There is no distinct section in that report devoted to any environmental analysis of the site by any person or agency qualified to conduct such an analysis. The report includes the headings "Project site", "Project description", "Project Review History", "Analysis", "Archaeological Assessment",

¹ It is important to understand what BDF's appeal is NOT. We are in favor of planning and providing for services and support of all recreation users. Hiking the John Muir Trail is not for all of us, especially those of us north of 70 years of age. Atascadero has a bright future as a gateway city, a gateway to recreation, the outdoors, California's Serengeti, elephant seals, and Highway 1. But we need to get RVs especially large RVs out of our driveways and to stop being fixtures on our residential streets. BDF believes we need convenient, safe, and secure RV storage. But APN 028-121-001 is the WRONG place. Let's help and support the applicant's search for a good alternative site.

"Landscaping", "Fencing, lighting and security", and "Storage Yard Conditions".²

There is no evidence that the project has been reviewed by qualified professionals regarding the environmental, recreational, social and aesthetic values of the site and the river's watershed, or the potential impacts on beaver habitat which brings us the benefits of water retention, groundwater recharge, and wildlife and riparian enhancement. The approval of this project was, therefore, based on insufficient and insubstantial information and grounds, lacking in proper analysis of its potential consequences. It must be reviewed, reevaluated and rejected by the City Council, until such time that a proper evaluation is conducted.³

The CEQA Portal admonishes that "In addition, a project cannot be "mitigated into an exemption" by adding measures or controls during the project's approval process to avoid identified potential environmental impacts. "

Notice of Intent to File CEQA Petition.

Respondent hereby gives notice under the provisions of the California Public Resources Code § 21167.5, that in the event this Project is pursued in its present form, Respondent intends to file a petition under the provisions of the California Environmental Quality Act against the City of Atascadero challenging its approval and addition of the RV Storage Project to APN 028-121-001

² This section uses and adapts research and briefing conducted by David Waterford.

³

THE ABSENCE OF EVEN A CURSORY SITE ENVIRONMENTAL REVIEW MUCH LESS ASSESSMENT AND BLIND RELIANCE ON AN UNSPECIFIED “CATEGORICAL EXEMPTION” PREVENTS ANY MEANINGFUL ENVIRONMENTAL EVALUATION OR MITIGATION

There are many signs and evidence of environmental activity on and adjacent to the proposed project site but the City’s ill-considered use of a blanket claim of categorical exemption provides few clues to environmental factors. Because of the apparent likelihood of the need for CEQA briefing BDF is engaging experts, including avian and other wildlife experts, to evaluate and where appropriate opine on water and wildlife factors, including the currently nesting pair of Bald Eagles adjacent to the site. Federal and State officials have been or will be notified of the nest and we believe after consulting with an avian expert that the applicable state and federal laws including the Bald Eagle Protection Act protect the Eagles and nest from **any** disturbance. We try to investigate if projects like this one might sometimes be mitigated and developed but neither the applicant nor the City has manifested any interest in exploring such an approach. Thus our Public Resources Code notice and efforts to retain experts.

CONCLUSION

We ask and urge the Mayor and Council Members to **REVERSE** and **VACATE** the Planning Commission’s July 18, 2023 4-3 decision in this matter; and **GRANT** the appeal of **BIODIVERSITY FIRST**.

*Respectfully submitted, with thanks to
our many Atascadero-based members,
friends, and colleagues*

BIODIVERSITY FIRST!

By: Michael R. Jencks, J.D., for the
BDF Board of Directors

Addendum (Under Separate Cover)

About Appellant .

BioDiversity First!, Inc.,

California Non-Profit Corporation and IRC §501(c)(3)

Mission Statement Biodiversity First! (BDF!) Working to preserve and protect the wild lands and species upon which we depend for our own physical and spiritual survival.

“Beaver dams build climate resiliency by slowing water down and storing it in their ponds and the surrounding riparian area. Their wetlands are

*uniquely resistant to disturbances like droughts and
fire.”*

Emily Fairfax 2019

Word Count 2310
Baskerville Old Face