

**BEFORE THE HONORABLE MAYOR MORENO 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 RENTALS and
LEASING, LLC,** Project Applicant;
**ATASCADERO MUTUAL WATER
COMPANY,** Real Party in Interest; and
DOES 1 through 10,
Respondents.

**SUPPLEMENT TO 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**

APPEAL HEARING DATE: OCTOBER 10, 2023
CITY COUNCIL CHAMBERS
6500 PALMA AVENUE
ATASCADERO, CALIFORNIA 93422

Submitted by Appellant
BIODIVERSITY FIRST!, INC.
3650 GILLIS CANYON
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SUPPLEMENT TO BDF APPEAL¹

Appellant Biodiversity First!, Inc. (BDF) respectfully supplements its previously filed and served Appeal 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 028-121-001,² The purpose of this supplement is to provide additional detail to the Mayor and City Council and to respond to questions raised by City staff, co-appellants, media, and citizens.

Appellant BDF Supports and Endorses the Respective Supplements of Co-Appellants

Let me quickly put to rest any confusion about one-or-two appeals and the “joint hearing”. BDF supports and endorses the arguments advanced by our co-appellants (“Broadwater *et al.*”) in their respective supplemental submissions, particularly those based on General Plan law and precedent, and will not in this supplement reiterate the importance and primacy of their work. At BDF we have a distinctive perspective given our experience in this watershed and our nonprofit corporate purposes but find ourselves largely in step with many of the positions of Mr. Broadwater, local residents, and Atascadero’s home-grown Beaver Brigade and do not intend in this supplement in support of our appeal to merely reiterate others’ good works some of which have been incorporated by prior reference in BDF’s own appeal papers. That being said, and despite
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¹ Two separate and independent appeals were filed after the Planning Commission 4-3 vote on July 18, 2023 approving the six-acre recreational vehicle lot on Sycamore Road property belonging to Real Party in Interest Atascadero Mutual Water Company lot, APN 028-121-001. The first appeal was filed by long-time Atascadero resident David Broadwater and the second by California nonprofit 501c3 corporation Biodiversity First!, Inc. Each had timely filed opposition to the planning commission matter on the proposed RV Storage on the floodplain and each timely filed a notice of appeal. Each appeal was required to pay - and paid - the filing fee. City planning director Phil Dunsmore proposed a “joint hearing” of the two appeals be set and heard by the Mayor and City Council on October 10, 2023. It is our understanding that the Joint Hearing Transcript will constitute the hearing transcript for any further proceedings, whether by City, Mr. Broadwater, or BDF.

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our agreement to enter into this *joint* hearing for the sake of efficiency and on account of relatedness on some issues, BDF's appeal and relief it seeks are entirely independent and warrant the need for a separate appeal (even if doubling the appeal fees paid to the City!).

Categorical Exemptions to CEQA are Subject to Express Exceptions

As noted and cited in BDF's opening appeal brief "the categorical exemptions are not absolute" Although a project might otherwise be eligible for a categorical exemption, **an exemption must be denied if "there is a reasonable possibility of a significant effect on the environment due to unusual circumstances"** 14 Cal.Code Regs §15300.2(c)", **significant cumulative impacts from projects of the same type will result** 14 Cal.Code Regs §15300.2(b), and **the project will have impacts on a uniquely sensitive environment**" 14 Cal.Code Regs §15300.2(a).

The Planning Commission's narrow-majority's reliance on a Categorical Exemption from CEQA is Misplaced. **Although a project might otherwise be eligible for a categorical exemption, an exemption must be denied if there is a reasonable possibility of a significant effect on the environment due to unusual circumstances or if significant cumulative impacts from projects of the same type will result.**

Unusual Circumstances. If there is a reasonable possibility that an activity or project will have a significant effect - just one - on the environment due to unusual circumstances or "significant cumulative impacts", an agency may **not** find the activity or project to be categorically exempt from CEQA. 14 Cal.Code Regs §15300.2(c)³

"Unusual Circumstances" and "Significant Cumulative Impacts" are present in number and require this Council's exception of project from Categorical Exemptions under CEQA⁴ If even just one of these is present, the claimed exemption must be disallowed and CEQA must be followed and implemented.

³ Please note this exception applies only when both unusual circumstances and a significant impact as a result of three unusual circumstance are shown. *Berkeley Hillside Preservation v. City of Berkeley* 2015 60C4th1086, 1104

⁴ In evaluating whether a categorical exemption may apply, the agency may **not** rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exemptions does not apply. See, e.g. *Salmon Protection & Watershed Network County of Marin* 2004 125 CA4th 1098, 1102

- Contemporaneous development and processing of major General Plan Update with approval of putative storage facility extending across floodplain to River's edge is itself an **unusual**, even inconsistent, circumstance with public discussions of changes in the GP, with many echoes of Monterey County experience that resulted in a very channelized river and the consequent floods and meanders of the river. We must be cautious about imputing bad motive to anyone so best to leave it that the optics - the rush to get this facility in ahead of the general plan update -are not good;
- The project will have an **unusual** and significant effect on the use and function of the River and associated floodplain as a wildlife corridor;
- The project poses an **unusual** and significant - and potentially expensive to the applicant and City - circumstance should it disturb, harass, or interfere with, much less drive the avian inhabitants away, from the active Bald Eagle nest in proximity to the project. The Bald Eagle is protected by an eighty-three year old federal statute which imposes up to a \$100,000 fine on individuals and up to \$200,000 on organizations/businesses that so disturb, harass, interfere with, or evict the Eagle pair;
- The project is proposed to be situated on APN 028-121-00 portions of which have been historically, at least until very recently, used to dump asphalt, construction dirt and aggregate, serving sometimes as a borrow pit, and other contaminated material and substances. It is not proposed that any removal or mitigation of the residue of the site's past use need occur although the location of the residue appear to be close and sometimes overlies river aggregate sedimentary deposits and underflow. This is an unusual and significant environmental effect;
- Atascadero is the first incorporated city on the River below its headwaters and a number of cities and communities and more than an estimated 300,000 persons, including 30,000+ Atascadero residents, live within five miles of the River over the approximately 170 miles the River travels before it discharges into the Pacific Ocean. Any discharge or release of waste, pollutants, solvents, PPSMs will be carried downstream and give rise to potential liability of Atascadero under the federal Clean Water Act and various state laws. This is an unusual and significant environmental effect.
- Two dams are immediately upriver from Atascadero, the War Department's pre-World War II "Salinas Dam" holding over 25,000 acre feet of River water, and rated and assessed as High Risk, and a few miles below the Salinas Dam an unnamed rogue, unlicensed, uninspected dam estimated at less than one-fifth the volume of water of the Salinas Dam. Both dams were built before good seismic mapping had been done and before fortifications to guard against sabotage but in the interest of security more detailed assessments of the hazard from the Salinas Dam are no

longer available to the public.⁵ Atascadero sits at the bottom of the hills with both dams perched above it; both dams have accumulated large amounts of sediment trapped behind them. The existence of the dams and their hazard potential, both to humans and Atascadero's environment and to the upriver environment, are **unusual** and pose significant and substantial environmental threats. The very inadequacy and unavailability of more detailed hazard assessment information concerning upriver dams⁶ require early CEQA Review

- Climate change projections for increased rainfall on the Central Coast have not yet been incorporated into FEMA flood and floodplain projections but the recent hurricane, Hillary, brought serious flooding to areas just East of our Coast Range. This is yet another **unusual** and while significant still not fully quantified environmental effect.
- Channelization from moving fencing and improvements to the River's water edge, the planned density of the siting of the 262 RV spaces shown on the project map (see exhibit attached to this supplement), and relocation of the De Anza trail away from the River will have significant environmental effects on the function of the floodplain to deal with disparity of river flows, use and function of the river and floodplain to serve as connecting corridor for wildlife. This is an unusual circumstance and has a significant environmental effect.
- One of the most important issues raised by this project as proposed falls under the general category of "**channelization**". On our part of the river (as opposed to down river, particularly north of Salinas) channelization is rarely talked about at least out loud and so is "unusual" and it has potentially devastating impacts on the environment and on the character of our community. The proposed project, nominally an RV Storage Yard⁷, is an example of intentional and strategic channelization, the intentional reduction in the lateral dimension of rivers for, most commonly, purposes of flood control and navigation (increasing water depth) but here is to convert floodplain land into more productive and economically remunerative use (imagine two story condos lining the river). To channelize is exactly what it sounds like, the human process of straightening and deepening channels in rivers. Most often it is done to make the river easier and safer for larger boats to pass through, to provide a channel that is stable and unchanging, and to protect developed cities and towns from river

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⁶ Salinas Dam is one of a number of dams for which the downstream hazard potential is "not available" to the public and is "restricted to approved government users" only.

⁷ As described in our opening submission on appeal and since confirmed in conversations with insurance company executives, the likelihood of an RV owner or the "storage" facility owner even being able to procure a policy covering flood damage to a vehicle stored on a FEMA-mapped floodplain, much less an affordable policy, is almost nil.

meander, but here the only obvious function is to add to the real estate value of the land reclaimed from floodplain use.

- Before a river like the Salinas River receives a channelized makeover, it typically is long and meandering, lined with tree snags and islands, a swath and corridor of natural habitat in a flood plain able to absorb and buffer the seasonal fluctuations in flow and manmade emergencies of flooding whether it be the result of a fifty year storm, enhanced precipitation linked to climate change, or dam emergency. For agriculture, channelizing on and bank stabilizing on makes land that is closer to rivers more stable and thus easier to farm. This has been the case down river, particularly north of Salinas.
- However, with such major changes, in the case before us, to augment development and profitable enterprise, come serious environmental consequences. Some of the greatest effects include loss of wetland habitats, reduced woody debris being washed into the River, erosion, channel incision and a decrease in species diversity. Erosion and channel incision can be a serious threat to infrastructure, especially in developed areas. Erosion is increased particularly by the straightening aspect of channelization. By removing the natural bends from rivers, the water has a longer me to build up speed, and this means the water pulls much more of the surrounding soil with it.
- That channelization has been deliberately kept below the public's radar, is **unusual**, and poses **dramatic impacts on the environment**. The remedy is to reverse the planning commission decision - without prejudice - to renewal either following adoption of the updated and revised City General Plan or upon full compliance with CEQA after striking the categorical exemption.
- Cumulative impacts from projects of the same type will result in more River channelization, elimination of floodplain, and a River system much less tolerant and able to handle fluctuations in River volume due to storms, climate change enhanced storms, dam releases and failures, displacement and/or termination of floodplain corridor and trail benefits, and violation of the laws and regulations governing navigable rivers requiring court and/or legislative intervention.

It will take only one (1) of the above ten (10) itemized exceptions to operate to extinguish the categorical exemption asserted by City staff and return this project to normal CEQA processing.

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An Invitation to Mayhem What Could They Have Been Thinking?

The textbook definition of a “floodplain” is an “area of [low-lying](#) ground adjacent to a river, formed mainly of alluvial river-borne [sediments](#) and prone to [flooding](#).” We’ve already addressed the fact that property – structures and RVs for example – on the floodplain probably will not even be eligible for flood damage insurance coverages and the proximity of the stored property to the main river channel means that property is unlikely to fare well when a fifty-year storm arrives, or the next hurricane Hillary wanna-be’s path is a degree or two west of the recent storm, or the rogue, unlicensed, unengineered dam gets blown out and thousands of acre feet of water and tons of alluvial deposits are launched down the river at Atascadero. What if the eighty-three year old, hurriedly designed and built on the eve of World War II Salinas Dam fails and launches over 25,000 acre-feet of River water and sediment at Atascadero? Some people have suggested that the “RV Park” may just be a ruse to justify deliberate channelization (maybe an EIR will help us understand) but one must ask what was the four-person majority of the Planning Commission thinking? They admit the RV Park sits on designated floodplain! Please look at the RV Park map that appears as Exhibit A to this Supplement to see not just the obvious vulnerability of property so close to the main River channel but to see how dramatic the Commission’s departure from the current General Plan’s policies, guidelines, and principles is (see next section). And with 262 recreational vehicles, what kind of emergency evacuation is possible on Sycamore Road? Tropical storm or hurricane? Upstream dam blow out? An invitation to mayhem indeed. Imagine attempts by some local owners to remove their recreational vehicles in emergency and likely to be poor conditions to begin with and the likelihood that not only is getting them out of the RV storage problematic but the congestion they are likely to cause on evacuation routes needed by residents in direct danger?

The Project is Inconsistent With Existing Policies of the Current General Plan

The first filed appeal, brought by Mr. Broadwater, has done a detailed “consistency” review of the Open Space Policies of the Land Use, Open Space & Conservation Element of the current General Plan. That review points to evidence that the RV storage CUP is, in fact, inconsistent with the current General Plan and contradicts key

findings that it is, e.g., findings that it will not be detrimental to the health, safety or welfare of the general public, findings that it will not be inconsistent with the character of the immediate neighborhood, and findings that, simply because the property is currently zoned as Industrial Park, other factors that must be included in decision-making may be neglected or overridden.

The Open Space Policy cites the need for protection of the Salinas River corridor from detrimental developments. This RV storage project is plainly inconsistent with the current General Plan's Open Space Policies and we join Mr. Broadwater in urging the Council find that the project is inconsistent with them. Selected text in Open Space Policies is highlighted in **BOLD** to indicate those with which this CUP may be deemed by the City Council to be inconsistent, and to support findings that it should be denied or delayed.

Land Use, Open Space & Conservation Element

June 25, 2002 ...

E. Land Use, Open Space, and Conservation Goals, Policies and Programs [page II-13]

...

2. Open Space Policies [page II-27] ...

Goal LOC 6. Preserve natural flora and fauna and protect scenic lands, sensitive natural areas...

Policy 6.1: Ensure that development does **not degrade scenic and sensitive areas**, including historic sites, **creeks, riparian corridors, wetlands**, woodlands, hillsides and other valuable **habitats**.

Programs: ...

4. Scenic and sensitive lands including **creeks, riparian corridors, wetlands** and other areas of significant **habitat** value **shall be protected** from **destruction, overuse, and misuse by the use of zoning**, tax incentives, easements, or fee acquisition.

5. Public and private development in **close proximity** to scenic and sensitive lands, including **creek reservations**, wooded areas, **flood plains**, prominent view sheds and historic sites **shall** be designed to **minimize impacts**.

6. Scenic and open space easements, parklands and **open space dedications shall be required** as mitigation for subdivisions and development projects that impact, **floodplains, creek reservations**, wooded areas, scenic backdrops, sensitive areas, historic sites, cultural sites, and similar areas.

7. The City **shall** carefully evaluate both public and private projects to **require the preservation** of trees, **watersheds**, natural slopes, and **other natural features**.

...

Goal LOC 8. **Watershed** areas of Atascadero **shall be protected**.

Policy 8.1: **Ensure** that **development** along Atascadero Creek, Graves Creeks, the **Salinas River**, blue line creeks, and natural springs, lakes, or other **riparian areas** does **not** interrupt natural flows or **adversely impact riparian ecosystems** and water quality.

Programs:

1. **Work with other agencies** to implement the Erosion

Control Assistance Program for **review** of development proposals to **minimize sedimentation** of creeks and the **Salinas River**.

2. Update the Appearance Review Manual to include provisions for **preserving, reclaiming and incorporating riparian features** in conjunction with new development.

3. The waterways in the City shall be maintained in a natural state...

...

6. **Prohibit** new structures or **disturbance** of **riparian habitat** along **creek banks** except for restoration purposes.

...

8. Prior to permit approval, refer projects along blue-line creeks to the Corps of Engineers, Department of Fish and Game, Regional Water Quality Control, and Upper Salinas-Las Tablas Resource Conservation District.

9. Creek reservations and the **Salinas River shall be preserved for open space and recreational use**, with appropriate areas **left in their natural state** for public enjoyment and habitat purposes. Any recreational use of the River and creeks shall minimize its impact on the habitat value and open space qualities of the creeks.

10. **Land disturbance shall be minimized** in **proximity to watercourses** including necessary flood protection measures, such as selective brush clearing, and low-impact trail development.

11. **Areas subject to flooding**, as identified through flood hazard overlay zoning and flood maps, **shall be protected** from unsound development consistent with the City's flood hazard ordinance requirements.

...

13. **Support** the establishment and **protection** of **floodable terraces, wetlands, and revegetation** along **creeks and streams**.

Policy 8.2: Establish and **maintain setbacks** and development standards for **creek side development**.

Program:

1. Adopt and maintain a creek setback ordinance that will establish building **setbacks** and development standards **along the banks** of Atascadero Creek, Graves Creek, blue line creeks and the **Salinas River** to ensure the uninterrupted natural flow of the streams and **protection** of the **riparian ecosystem**...

...

Programs:

1. **Develop** park, **trail**, and **recreational amenities** where

appropriate in public **creek reserves**.

2. **Require** the dedication of **trail easements** and **access**

points as part of subdivision maps or development permits

consistent with the Circulation Element.

BDF Standing

This section is more informational than argument - no one has asserted or alleged Biodiversity First! (BDF!) lacks standing to appear before the Planning Commission or to appeal the Planning Commission's narrow 4-3 vote to the Council. BDF timely filed written opposition to the application of VSM/AMWC before the Planning Commission, and timely filed a brief and paid the appeal fee in full in support of its appeal of the Planning Commission 4-3 vote approving the application.

BDF is a nine year old California not-for-profit corporation in good standing and certified and recognized as an IRC §501(c)3 tax exempt organization. As stated on its popular website, "Biodiversity First!'s purpose is the protection and recovery of, and securing a future for, all species of wild animals and plants by protecting and conserving the lands, waters, watersheds, and connectivity that support a symbiotic community that enables climate change resilience".

BDF supports the now more than ten-year-old initiative of Ecologistics Inc. known as “Dreaming the Salinas” and BDF’s board members, staff, and volunteers have experience with many Salinas River watershed issues, including legal representation of other Salinas watershed cities. Our board members and staff members have been involved with early efforts to mitigate the flood danger of the unpermitted dam a few miles below the Salinas Dam and up-river from Atascadero. We believe in letting our funded projects and litigation speak for us. ⁸

And that is the case with our projects inside the City boundaries of Atascadero, two of the most recent ones being the two research grants, totaling more than \$50,000 with faculty, researchers and students at California State University Channel Island, under the guidance and leadership of Dr. Emily Fairfax, currently Assistant Professor of Physical Geography , Department of Geography, Environment, and Society University of Minnesota, Twin Cities.

Through these research grants, BDF hopes to contribute to establishing a new language for this keystone species in our region that will assist land and water management decisions to shift toward embracing the benefits that beavers offer to wild animals, local and migratory birds, frogs, amphibians, insects, and aquatic plants as they help restore the ecosystem in the Salinas River watershed. The first grant, made in 2020, was titled “2020 Biodiversity First! Research Grant: Beavers, Climate Change, and Ecosystem Resilience”, and the second grant followed two years later. In addition to these Atascadero-specific grants, BDF has also funded technical training of employee(s) and volunteer(s) to staff and provide technical assistance to groups working with or in collaboration with the Beaver Brigade.⁹

⁸ BDF’s board of directors, staff, members (many residents of Atascadero), and volunteers are comprised of a diverse group of caring and committed citizens, and include persons who have been employed by or worked for the Governor’s Office of Planning and Research, served as staff to the California Coastal Commission, represented the State Energy Commission in federal court litigation, were among founders of the SLO County-based Municipal Advocates Group, and have argued cases before many of the highest courts in the State and country.

⁹ We are impressed by and grateful for the remarkable cooperation and knowledge of City of Atascadero staff but we’ve also appreciated the candidly offered opinions of a couple of persons to the effect that “you don’t understand how things are done here” . We listen but we are concerned that for too long the default may have trended to place dirty or otherwise problematic uses next to

BDF has also organized and sponsored several well-attended programs
venued in Atascadero.

Other Issues And Investigation

Preparation of an EIR will address many of the issues addressed in this brief. Should the applicant and/or Real Party withdraw the project application, or should one or both of the appeals not be sustained by Council and proceedings in appellate courts ensue, it still appears advisable that the City Council consider directing City staff to investigate and if they deem it advisable meet with regulators of Salinas Dam and with the owner(s) of the unlicensed dam to produce a risk assessment of the partial or total failure of said dams and the impacts of such failure(s) on City property; that staff consider and recommend to Council whether to incorporate the goal and waste standard of net zero degradation of River including underflow.; that Staff consult and retain the assistance of an avian species expert to identify what activities should be regulated and at what proximity to the extant Bald Eagle nest.

Bald Eagle Protection: Our Canaries in the Coal Mine

I have included the Bald Eagle issue also as one of the “unusual circumstances” operating to discharge the CEQA exemption and it is discussed in that context above. But the eagles in a sense are the canaries in our coal mine, they don’t depend on CEQA being triggered to have some hope of surviving the threat of the RV project.

The Act defines "take" as to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." Regulations further define "disturb" as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest

the River (sort of upside down zoning, placing your dirtiest and most toxic uses closest to your most pristine and sensitive habitats) and floodplain and not to be fully accountable for any harmful or noxious impacts or environmental degradation.

abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior" ([50 CFR 22.6](#)).

We don't think we should have to belabor the point but is the unanticipated discovery in the project vicinity of an active nest of a bird of prey protected by not just any federal law but one named after the avian species that is our national symbol and enacted not in the flurry of environmental laws enacted in 1969-1974, but eighty-three years prior in 1940, and carrying penalties of \$100,000 to \$200,000 for disturbing or dislocating the nest or its inhabitants"; is that an "unusual circumstance"? Is it made more unusual if the federal law protects the avian species from any disturbance or dislocation? Or do the six figure penalties for violation of the law by the applicant or by the City as the permitting agency render it unusual? Similarly, does the fact that there is a rogue, unpermitted dam on the Salinas River upstream from the project site for which the owner has restricted access to all files including by the University and state agencies that had been working on mitigation to be implemented to prevent catastrophic dam failure launching hundreds of acre feet of water and tons of accumulated settlement down the Atascadero floodplain? Is it unusual that an 83 year old dam upstream holding upwards of 25,000 acre feet of water is rated "High Risk" but all other risk assessment data is impounded and unavailable to the public? Is it unusual that the project site is on top of a flood plain consisting of yards-deep cover of alluvial aggregate? and is it unusual that recent storms have shown that the need to enlarge protection and operation of the floodplain to both deal with bigger storms and to protect the City from up river dam failures? Most of the foregoing are situations where there is reasonable possibility of a significant effect on the environment due to unusual circumstances but *cumulative* impacts from projects of the same type are also possible adding another independent ground for sustaining an exception to an exemption. Does the City's approval of this project, rejecting consideration of significant environmental impacts, not operate as an invitation to other projects of the same or similar type and ilk to locate on the river, overlying its underflow and deposits of aggregate matter forming the floodplain, without having to account for the cumulative impact of such projects? Really?

But the rigid enforcement of the categorical exemption choice, before an initial study and attributing absolute cut-off to the choice, barring introduction and consideration of both statutory and general exceptions, is directly contrary to state statutory and decisional law, and constitutes prejudicial error.\

The planning commission's decision should be reversed and vacated and the matter referred and returned to the Community Development Department for further proceedings consistent with this opinion.

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Applicant and Non-Appearance By Real Party In Interest

A brief note on the parties before the Council may be appropriate here. The project applicant, VSM Leasing & Rentals LLC, is appearing before this Council as the *presumed* lessee of land from the property owner of record and real party in interest Atascadero Mutual Water Company. AMWC advertises that it serves 30,000 customers through more than 10,000 connections., *presumed* because AMWC has not itself appeared in this action and the lease - or at least proof of AMWC's consent to the lease - does not appear in the record provided to and reviewed by appellant, perhaps to try to avoid any real or perceived voting conflicts of interest by Council members should they hold shares or other beneficial interests in AMWC. This may be relevant because the recent trend, including at the north end of this watershed, is for the owners of record of mapped floodplain lands to favor channelization, buttressing of river banks, and then development of the floodplain properties. Appellant believes the lease itself and real party's consent to that lease should be part of the public record in this proceeding as are the Council's individual conflict filings.

The City of Atascadero Is Effectively the Constructive Trustee of Salinas River Water When It's Within City Boundaries; Zero Discharge of Contaminants Must Be Atascadero's Strategic Goal

The City of Atascadero's position as a subordinate entity of the State of California can be best thought of as being in the position of a constructive trustee¹⁰ of the Salinas River flow and underflow passing through the city and within its municipal boundaries. Most of Atascadero's population reside and/or work within five miles of the River, a number currently estimated at approximately 34,000 persons, but the River passes through two counties and a number of cities and using the same five mile delimitation, and after it leaves Atascadero it is estimated another 275,000 persons live within five miles of the River before it reaches the Pacific Ocean.

¹⁰ A constructive trust is a form of equitable remedy, often imposed by a court, to benefit a party that has been wrongfully deprived of its rights due to either a person obtaining or holding a legal property.

The City receives both benefits and liabilities from “hosting” the River for a few miles and inherits obligations from its status as the municipal entity through which the River passes through to send the water downstream to other communities in the same condition as it received it. It is the closest municipal entity to the river and floodplain and receives the cleanest, freshest water but it also bears the largest municipal burden of river floods and dam failures and to so oversee and police river and floodplain use so as to protect and not degrade the natural resource . The day is close at hand if not already passed when Atascadero water will be tested entering your city and leaving your city. In your use and zoning the City must understand it may be held liable for degradation under various provisions of state and federal law, including the federal clean water act. We cannot continue to use the river as our waste discharge utility. To place a recreational vehicle parking lot on a permeable and porous collection of river deposited aggregates and human detritus from hydrocarbons, to PFAS’s¹¹, lithium, to human waste and the migration of those substances to and by river transport is actionable - it is purporting to license and permit the fouling of a public water supply.

The optics are not good should it appear the planning commission majority handed the water district a favor in the tenancy of VSM and effectively gave the tenant a license to pollute.

CONCLUSION

BDF respectfully asks and urges the Mayor and Council Members, on the factual and legal record before them, to REVERSE and VACATE the Planning Commission’s July 18, 2023 4-3 decision in this matter; and GRANT the appeal of BIODIVERSITY FIRST!, Inc.¹²

Respectfully submitted, *with thanks to our many Atascadero-based members, friends, and colleagues,*
BIODIVERSITY FIRST!, INC.

s/ *Michael R. Jencks*

¹¹ AMWC officials have indicated Real Party in Interest AMWC has already done definitive testing for PFAS contamination of Salinas River water and that laboratory reports of the testing AMWC confirms it is occurring.