



County of San Diego

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MITIGATED NEGATIVE DECLARATION

March 15, 2021

Project Name: Rainbow Water Quality Improvement Project

Project Number(s): 1023742

This Document is Considered Draft Until it is Adopted by the Appropriate County of San Diego Decision-Making Body.

This Mitigated Negative Declaration is comprised of this form along with the Environmental Initial Study that includes the following:

- a. Initial Study Form
- b. Attached extended studies for aquatic resources, biological resources, and cultural resources

1. California Environmental Quality Act Negative Declaration Findings:

Find, that this Mitigated Negative Declaration reflects the decision-making body's independent judgment and analysis, and; that the decision-making body has reviewed and considered the information contained in this Mitigated Negative Declaration and the comments received during the public review period, and; on the basis of the whole record before the decision-making body (including this Mitigated Negative Declaration) that there is no substantial evidence that the project will have a significant effect on the environment.

2. Required Mitigation Measures:

Refer to the attached Environmental Initial Study for the rationale for requiring the following measures:

A. BIOLOGICAL RESOURCES

1. Construction should be initiated outside of the bird breeding season (January 15 to September 1) to the extent feasible. If construction initiation occurs during the bird breeding season, a pre-construction nesting bird and raptor survey of the project area and an appropriate

buffer of up to 500 feet shall be completed by a qualified biologist prior to vegetation removal or noise generating construction activities. If any active nests are detected, the area will be flagged and mapped on construction plans along with a buffer as recommended by the qualified biologist. The buffer area(s) established by the qualified biologist will be avoided until it is determined that the nest is no longer active. The qualified biologist shall be a person familiar with bird breeding behavior and capable of identifying the bird species of San Diego County by sight and sound and determining alterations of behavior as a result of human interaction. Buffers will be based on local topography and line of sight, species behavior and tolerance to disturbance, and existing disturbance levels.

3. Critical Project Design Elements That Must Become Conditions of Approval:

The following project design elements were either proposed in the project application or the result of compliance with specific environmental laws and regulations and were essential in reaching the conclusions within the attached Environmental Initial Study. While the following are not technically mitigation measures, their implementation must be assured to avoid potentially significant environmental effects.

A. BIOLOGICAL RESOURCES

1. Prior to construction, impacts to wetland and riparian habitat shall be avoided and minimized to the maximum extent feasible, and the work area shall be clearly flagged or marked adjacent to Rainbow Creek to prevent accidental impacts to sensitive vegetation.
2. Standard water quality best management practices will be implemented to prevent construction materials or pollutants from vehicles from washing into Rainbow Creek during construction. The storage of contaminants and staging of equipment will be conducted away from ditches and creeks to prevent the erosion or spillage of contaminants into the creek or ditches connected to the creek. Silt fencing, sandbags, and/or diversions will be implemented to prevent sediment laden materials from washing downstream during activities within and adjacent to ditches and streams.

B. CULTURAL RESOURCES AND TRIBAL CULTURAL RESOURCES

1. A qualified archaeologist and Luiseño Native American monitor will be provided during initial project-related ground disturbing activities. If inadvertent discoveries of cultural resources are made, the County, project archaeologist, and appropriate Native American representative shall divert or temporarily halt ground disturbance operations in the area

of discovery to assess the significance of the resources and confer regarding the appropriate treatment.

2. Inadvertent Archaeological Find: If during ground disturbance activities, unique cultural resources are discovered that were not assessed by the archaeological report(s) and/or environmental assessment, the following procedures shall be followed:
 - i. All ground disturbance activities within 100 feet of the discovered cultural resources shall be halted until a meeting is convened between the County, project archaeologist, and appropriate Native American representative to discuss the significance of the find.
 - ii. At the meeting, the significance of the discoveries shall be discussed and after consultation with the County, appropriate Native American representative, and the project archaeologist, a decision shall be made, as to the appropriate mitigation (documentation, recovery, avoidance, etc.) for the cultural resources.
 - iii. Grading of further ground disturbance shall not resume within the area of the discovery until an agreement has been reached by all parties as to the appropriate mitigation. Work shall be allowed to continue outside of the buffer area and will be monitored by additional cultural monitors if needed.
 - iv. Treatment and avoidance of the newly discovered resources shall be consistent with the Cultural Resources Management Plan and Monitoring Agreements entered into with the appropriate tribes. This may include avoidance of the cultural resources through project design, in-place preservation of cultural resources located in native soils and/or re-burial on the project property so they are not subject to further disturbance in perpetuity as identified in Non-Disclosure of Reburial Condition.
 - v. If the find is determined to be significant and avoidance of the site has not been achieved, a Phase III Data Recovery Plan shall be prepared by the project archeologist, in consultation with the Tribe, and shall be submitted to the County for their review and approval prior to implementation of the said plan.
 - vi. Consistent with California Public Resources Code Section 21083.2(b) and Assembly Bill 52 (Chapter 532, Statutes of 2014), avoidance shall be the preferred method of preservation for cultural resources.

3. Cultural Resources Disposition: The following procedures, in order of preference, shall be employed with the tribes and carried out for final disposition of the inadvertent discoveries of Native American cultural resources:

- i. Preservation in place of the cultural resources, if feasible. Preservation in place means avoiding the resources, leaving them in the place where they were found with no development affecting the integrity of the resources.
 - ii. Reburial of the resources on the project property. The measures for reburial shall include, at least, the following: Measures and provisions to protect the future reburial area from any future impacts in perpetuity. Reburial shall not occur until all legally required cataloging and basic recordation have been completed, with an exception that sacred items, burial goods and Native American human remains are excluded. Any reburial process shall be culturally appropriate. Listing of contents and location of the reburial shall be included in the confidential Phase IV Report. The Phase IV Report shall be filed with the County under a confidential cover and not subject to Public Records Request.
 - iii. If preservation in place or reburial is not feasible then the resources shall be curated in a culturally appropriate manner at a San Diego County curation facility or Tribal curation facility that meets State Resources Department Office of Historic Preservation Guidelines for the Curation of Archaeological Resources ensuring access and use pursuant to the Guidelines. The collection and associated records shall be transferred, including title, and are to be accompanied by payment of the fees necessary for permanent curation. Evidence of curation in the form of a letter from the curation facility stating that subject archaeological materials have been received and that all fees have been paid, shall be provided to the County. There shall be no destructive or invasive testing on sacred items, burial goods and Native American human remains. Results concerning finds of any inadvertent discoveries shall be included in the Phase IV Monitoring Report.
4. A qualified archaeologist and Luiseño Native American Monitor will be provided during initial project-related ground disturbing activities. If human remains are encountered, consistent with California Health and Safety Code Section 7050.5, no further disturbance shall occur until the County Coroner has made the necessary findings as to origin of the remains. Further, consistent with California Public Resources Code Section 5097.98(b), human remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made.

If the County Coroner determines the remains to be Native American, the Native American Heritage Commission (NAHC) shall be contacted within twenty-four (24) hours. The NAHC shall immediately identify the "most likely descendant(s)" (MLD) and notify them of the discovery. The

MLD shall make recommendations within forty-eight (48) hours after being allowed access to the site, and engage in consultations with the landowner concerning the treatment of the remains. The immediate vicinity where the Native American human remains are located is not to be damaged or disturbed by further construction activity until consultation with the MLD regarding their recommendations as required by Public Resources Code Section 5097.98 has been conducted. Public Resources Code §5097.98, CEQA §15064.5 and Health & Safety Code §7050.5 shall be followed.

ADOPTION STATEMENT: This Negative Declaration was adopted and above California Environmental Quality Act findings made by the:

on _____

DPW Environmental Services Unit