



County of San Diego

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MITIGATED NEGATIVE DECLARATION

March 1, 2022

Project Name: Live Oak Springs Water System Improvements Project

Project Number(s): 1023303

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; and
 - 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

BIO-MIT-1: Minimization of Impacts to Sensitive Biological Resources

A qualified biologist provided by the County DPW (or their designee) would be on site periodically during construction activities that require implementation of

specific measures. The qualified biologist would be responsible for implementing the following measures:

1. Prior to the start of construction, the qualified biologist would be present to oversee the installation of fencing or staking along the limits of construction for all phases. All areas near but outside of the limits of construction that contain sensitive biological resources would be designated as environmentally sensitive areas and would be avoided. To ensure avoidance, the construction limits would be fenced off using snow fencing or other high-visibility fencing or staking material and clearly marked on construction as-built plans. The qualified biologist would check the protective fencing approximately weekly to ensure it remains in place through the end of the construction period, and the fencing around the limits of construction would be maintained throughout construction.
2. The qualified biologist would flush sensitive species (i.e., avian or other mobile species) from occupied habitat areas immediately before brush clearing and earthmoving activities. The biological monitor would be authorized to halt all associated project activities that may be in violation of the project mitigation measures.
3. The qualified biologist would instruct the contractor's personnel in providing daily cover and/or adequate escape ramps/routes for wildlife from excavated areas and oversee compliance by visiting the construction site approximately weekly. All steep trenches, holes, and excavations during construction would be covered at night with backfill, plywood, metal plates, or other means, and the edges would be covered with soils and plastic sheeting such that small wildlife cannot access them. Soil piles would be covered at night to prevent wildlife from burrowing in. The edges of the sheeting would be weighed down by sandbags. These areas may also be fenced to prevent wildlife from gaining access. Exposed trenches, holes, and excavations would be inspected to monitor for wildlife entrapment by the contractor's personnel daily and by an approved biologist during site visits. Excavations would provide an earthen ramp to allow for a wildlife escape route.

BIO-MIT-2: Nesting Season Avoidance and Pre-construction Nesting Bird Surveys

1. Grubbing, trimming, or clearing of vegetation from the project site would avoid the raptor and bird breeding season (January 15 through August 31) to the greatest extent feasible.
2. If grubbing, trimming, or clearing of vegetation cannot feasibly occur outside of the general bird breeding season, the qualified biologist would perform a pre-construction nesting bird survey no more than 1 week prior to the start of vegetation grubbing, trimming, or clearing to determine if active bird nests are present in the affected areas. Should an active bird nest be located, the qualified biologists would establish a buffer and direct vegetation clearing away from the nest until the project biologist has determined that the young have fledged or the nest has failed. If no nesting birds (including nest building or

other breeding or nesting behavior) are on the project site, grubbing, trimming, or clearing would proceed.

3. In the event that grubbing, trimming, or clearing of vegetation for future phases cannot feasibly occur outside of the general bird breeding season, and are greater than 500 feet away from the previous construction activity, a qualified biologist would perform a pre-construction nesting bird survey no more than 1 week prior to the start of construction.

BIO-MIT-3: Restoration of Sensitive Vegetation Communities

1. Direct temporary impacts to approximately 0.008 acre of big sagebrush scrub shall require in-kind revegetation in place at a 1:1 ratio once construction is complete (County of San Diego 2010b).
2. Temporary impacts to approximately 0.009 acre of non-vegetated channel and approximately 0.001 acre of southern arroyo willow riparian forest (both potentially under the jurisdiction of USACE, RWQCB, and CDFW) shall be mitigated for through on-site restoration or off-site mitigation in accordance with ratio as negotiated with the USACE, RWQCB, and CDFW through the aquatic resources permitting process (BIO-MIT-4: Section IV(c)).
3. Temporary impacts to approximately 1.44 acres of non-native grassland shall require revegetation using native grass seed at a 0.5:1 ratio once construction is complete.
4. Direct permanent impacts to 0.009 acre of non-native grassland shall be mitigated at a ratio of 0.5:1 through on-site revegetation or off-site mitigation of the temporary non-native grassland areas using native grass seed once construction is complete.

BIO-MIT-4: Jurisdictional Aquatic Resources

1. Temporary impacts to the 0.009-acre non-vegetated channel and 0.001 acre of southern arroyo willow riparian forest, both potentially under the jurisdiction of the USACE, RWQCB, and CDFW, would be authorized by the USACE through the Section 404 Permit Program, by the RWQCB through a 401 State Water Quality Certification, and by the CDFW through a 1602 Streambed Alteration Agreement.
2. Approved temporary impacts to the potential federal and state jurisdictional non-vegetated channel and southern arroyo willow riparian forest require mitigation such as on-site habitat restoration, creation, and enhancement. Appropriate restoration and mitigation would be determined through negotiations with the resource agencies to the satisfaction of the USACE, RWQCB, and CDFW to achieve a no-net loss of federal and state jurisdictional non-wetland waters and wetlands.

B. CULTURAL RESOURCES

CUL-MIT-1: Cultural Monitoring

A County-provided qualified archaeologist and Kumeyaay Native American monitor would be present during the project-related vegetation clearing and grubbing and initial ground-disturbing activities. If inadvertent discoveries of

cultural resources are made, the County, project archaeologist, and appropriate Native American representative would 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. (i.e., preservation, avoidance, and/or mitigation for the resources). As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency would make provisions for historical or unique archaeological resources inadvertently discovered during construction.

Consistent with California Public Resources Code Section 21083.2(b) and Assembly Bill 52 (Chapter 532, Statutes of 2014), avoidance would be the preferred method of preservation for cultural resources. Work could continue in other parts of the project site while historical or unique archaeological resource mitigation takes place. The project archaeologist, in consultation with the County, would determine the significance of the discovered resources. For significant cultural resources, a Research Design and Data Recovery Program to mitigate impacts would be prepared by the archaeologist and approved by the County, then carried out using professional archaeological methods.

CUL-MIT-2: Inadvertent Archaeological Find

If during ground disturbance activities, unique cultural resources are discovered, the following procedures would be followed:

- i. All ground disturbance activities within 100 feet of the discovered cultural resources would 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 would be discussed and after consultation with the County, appropriate Native American representative, and the project archaeologist, a decision would be made as to the appropriate mitigation (documentation, recovery, avoidance, etc.) for the cultural resources.
- iii. Grading of further ground disturbance would not resume within the area of the discovery until an agreement has been reached by all parties as to the appropriate mitigation. Work would be allowed to continue outside of the buffer area and would be monitored by additional cultural monitors if needed.
- iv. Treatment and avoidance of the newly discovered resources would 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 reburial-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 would be prepared by the project archaeologist, in consultation with the Tribe, and would be submitted

to the County for their review and approval prior to implementation of said plan.

- vi. Consistent with California Public Resources Code, Section 21083.2(b), and Assembly Bill 52 (Chapter 532, Statutes of 2014), avoidance would be the preferred method of preservation for cultural resources.

CUL-MIT-3: Cultural Resources Disposition

The following procedures, in order of preference, would 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 would include, at least, the following: Measures and provisions to protect the future reburial area from any future impacts in perpetuity. Reburial would 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 would be culturally appropriate. Listing of contents and location of the reburial would be included in the confidential Phase IV Report. The Phase IV Report would 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 would 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 would 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, would be provided to the County. There would be no destructive or invasive testing on sacred items, burial goods and Native American human remains. Results concerning finds of any inadvertent discoveries would be included in the Phase IV Monitoring Report.

The following procedure would be employed for the disposition of historic period cultural materials:

- i. Historic materials would be curated at a San Diego curation facility and would not be curated at a Tribal curation facility or repatriated. The collections and associated records, including title, would be transferred to the San Diego curation facility and would be accompanied by payment of the fees necessary for permanent curation. Evidence would be in the form

of a letter from the curation facility stating that the historic materials have been received and that all fees have been paid.

CUL-MIT-4: Fencing of a Known Resource

Prior to any initial project-related vegetation clearing and grubbing within the project area, a qualified archaeologist and a Kumeyaay Native American monitor would be present on site to oversee the installation of Environmentally Sensitive Area (ESA) fencing around the perimeter of CA-SDI-23150 to avoid impacts to the site.

CUL-MIT-5: Avoidance and Minimization of Impacts to Undiscovered Human Remains

A qualified archaeologist and a Kumeyaay Native American monitor would 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 would 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 would 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) would be contacted within 24 hours. The NAHC would immediately identify the most likely descendant(s) (MLD) and notify them of the discovery. The MLD would 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 California Public Resources Code, Section 5097.98, has been conducted. Public Resources Code, Section 5097.98; CEQA Guidelines, Section 15064.5; and California Health and Safety Code, Section 7050.5, would be followed.

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, protective fencing or staking would be installed to mark the limits of construction to make the avoidance areas easily identifiable by construction crews. In addition, the limits of construction would be clearly marked on the construction as-built plans, and construction activities outside of the construction limits would be prohibited.
2. Tecate tarplant can potentially occur on the project site. The chamise chaparral, buck brush chaparral, and scrub oak chaparral vegetation communities would also be avoided to the greatest extent feasible by project construction, thereby avoiding potential impacts to Tecate tarplant.
3. A Storm Water Quality Management Plan was prepared and standard construction BMPs would be implemented, including dust suppression measures, erosion and sediment control measures (sand and gravel bags, fiber rolls, and silt fencing), use of weed-free erosion control products, spill prevention and control, concrete waste management, solid waste management, and sanitary waste management.
4. Pursuant to the National Pollution Discharge Elimination System General Construction Permit (Water Quality Order 99-08-DWQ), a Stormwater Pollution Prevention Plan (SWPPP) may be prepared and implemented. The SWPPP would address the potential sources and locations of stormwater contamination characteristics, impacts of specific contaminants, and temporary and permanent erosion-control practices and would include water sampling data, construction practices that minimize stormwater contamination, coordination of BMPs with planned construction activities, and compliance with County, state, and federal regulations.
5. The project is designed to use the disturbed habitat areas (primarily the existing dirt roads) for project impacts to avoid temporary and permanent impacts to the majority of the higher quality vegetation communities on the project site.
6. For all proposed project phases, upon completion of construction, areas disturbed during excavation or grading would be backfilled with native soil and restored using a native species hydroseed and/or plantings.

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

Gail Getz, Environmental Planning Manager
DPW Environmental Services Unit

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