



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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January 9, 2025

Shawna Scott, Special Projects Manager
City of San Luis Obispo
Public Utilities Department
879 Morro Street
San Luis Obispo, California 93401-3218
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**Subject: Groundwater Contamination Characterization Project (Project)
Mitigated Negative Declaration (MND)
SCH Number: 2024120528**

Dear Shawna Scott:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study (IS)/MND from the City of San Luis Obispo for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide recommendations regarding the activities proposed at the Project site that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under 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 and 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

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW may need to exercise regulatory authority as provided by the Fish and Game Code. For example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed 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 authorized as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Bird Protection: 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).

Federally Listed Species: CDFW recommends consulting with the National Marine Fisheries Service (NMFS) on potential impacts to anadromous Federally listed species. Take under the Federal Endangered Species Act (ESA) is more broadly defined than CESA; take under ESA 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 NMFS to comply with ESA is advised well in advance of any ground disturbing activities.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Luis Obispo (City)

Objective and Project Description: The City of San Luis Obispo is proposing to construct monitoring and treatment wells to clean-up and prevent tetrachloroethylene (PCE) contamination in drinking water supply wells. A maximum of 12 monitoring wells will be constructed on developed locations that are paved and have exiting infrastructure and be approximately 60 to 160 feet deep with a maximum depth of 200

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feet. Two groundwater extraction and treatment wells with associated water conveyance pipeline and infrastructure will be constructed on a 22-acre undeveloped site. One treatment well (TW-3) was constructed in February 2003 but has since been capped.

Construction of the treatment wells and associated infrastructure includes the following:

- Constructing a 650 square foot building at TW-3 site, to secure the well and electrical panels, and to serve as the centralized treatment system for both wells.
- Installing new treatment well TW-4, to a depth of 205 feet below ground surface.
- Constructing a 250 square foot building at TW-4 site, to secure the well and electrical panels.
- Installing a new 6-inch sewer line to connect the backwash storage tank to the City's sanitary sewer system.
- Installing a new 12-inch water line connecting the treatment infrastructure to the City's water distribution system.
- Installing a new 8-inch water line connecting TW-4 to TW-3.
- Installing perimeter security fencing, utility infrastructure, and access roads at both sites.

Location: The Project is located within the City of San Luis Obispo, in the southern portion of the City along U.S. Highway 101 between Prado Road and Los Osos Valley Road, in San Luis Obispo County, within Assessor's Parcel Number (APN) 053-051-045, 053-052-045, 053-131-013, 053-141-012, 053-152-006, 053-152-008, 053-153-014, and 053-153-008. The centroid for the treatment well location is approximately 35.24845 °N, -120.67869 °W.

Timeframe: Approximately beginning April of 2025 through October 2025.

COMMENTS AND RECOMMENDATIONS

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

Currently, the IS/MND acknowledges that the Project site is within the geographic range of several special-status animal species and proposes general mitigation measures to reduce impacts to less than significant; however, CDFW has concerns about the ability of some proposed mitigation measures to reduce impacts to less than significant and to avoid unauthorized take for special-status species including, but not limited to, the State Candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*), and the State species of special concern and federally threatened South-Central California Coast steelhead (S-CCC steelhead)

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(*Oncorhynchus mykiss irideus* pop. 9). In addition, CDFW has concerns regarding potential Project related impacts to water and riparian resources, including interconnected surface waters and groundwater dependent ecosystems.

CDFW recommends that the following modifications and/or edits be incorporated into the IS/MND, including proposed avoidance and minimization measures, prior to its adoption by the City.

Western Burrowing Owl (BUOW)

The California Fish and Game Commission approved western burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project is within known geographic range of BUOW (CDFW 2024) and the IS/MND indicates that the proposed treatment well area contains suitable habitat for the species, however, the IS/MND does not include a description of potential impacts to this species. The IS/MND includes mitigation measures for general special-status species surveys (BIO-2) and general nesting bird surveys (BIO-3), however, BUOW specific mitigation measures are not included. As BUOW is now a candidate under CESA, CDFW recommends that the Project's mitigation measures be updated to reflect the species updated status and recommends the following measures be incorporated into the Project to avoid unauthorized take.

Recommended Mitigation Measure 1: BUOW Surveys Prior to Construction

CDFW recommends that surveys, following the "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) be conducted within areas of suitable habitat the survey season immediately prior to construction.

Recommended Mitigation Measure 2: BUOW Buffers

If BUOW burrows known to be currently or previously occupied by BUOW are found, either during surveys or Project activities, CDFW recommends implementing a 500-meter no-disturbance buffer around each burrow.

Recommended Mitigation Measure 3: BUOW Take Authorization

If BUOW or burrows known to be currently or previously occupied by BUOW are found, either during surveys or Project activities, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If avoidance is not feasible, acquisition of a State Incidental Take Permit pursuant Fish and Game

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Code section 2081 subdivision (b), prior to any ground disturbing activities, would be necessary in order to comply with CESA.

Crotch's Bumble Bee (CBB)

The Project is within known geographic range of CBB and CBB have been recently found in the area (CDFW 2024). The IS/MND indicates that proposed treatment well area contains suitable habitat for the species, however, the IS/MND does not include any evaluation for the species. The IS/MND includes a mitigation measure for general special-status species surveys (BIO-2), however, CBB specific mitigation measures are not included. CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses (Xerces Society et al. 2018; CDFW 2024), and these habitat elements appear to be present within the Project site. The Project has the potential to impact CBB nesting habitat, overwintering queen refugia, and result in direct mortality of individuals. Without appropriate avoidance and minimization measures for CBB, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of bumble bee nests, and direct mortality of individuals. As such, CDFW recommends the following:

Recommended Mitigation Measure 4: CBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project area and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.

Recommended Mitigation Measure 5: CBB Surveys

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

Recommended Mitigation Measure 6: CBB Buffers

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

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Recommended Mitigation Measure 7: CBB Take Authorization

If avoidance is not feasible, acquisition of a State Incidental Take Permit pursuant Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities, would be necessary in order to comply with CESA.

South-Central California Coast (S-CCC) Steelhead

The locations of the proposed treatment wells are within approximately 300 feet of San Luis Obispo Creek, which is occupied by S-CCC steelhead. It is unclear how much groundwater will be extracted from the treatment wells, and if an analysis of impacts to San Luis Obispo Creek, including impacts to steelhead, was conducted. Data from Groundwater Sustainability Plans (GSP) groundwater monitoring sites within this area indicate depth to groundwater is approximately less than 20 feet (DWR 2025). The proposed treatment wells may be hydrologically connected to San Luis Creek. CDFW recommends the IS/MND include an analysis of Project-related activities in relation to potential impacts to San Luis Obispo Creek, including potential impacts to steelhead.

Editorial Comments and/or Suggestions

Sustainable Groundwater Management Act (SGMA), Interconnected Surface Waters, and Groundwater Dependent Ecosystems (GDE):

Groundwater Sustainability Plans were prepared for the San Luis Obispo Valley. The San Luis Obispo Valley Groundwater Basin (No. 3-009) is designated as a high priority basin by the Department of Water Resources (DWR). SGMA defines sustainable groundwater management as, “management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results (Water Code, § 10721 (v)).” The IS/MND states the proposed wells are within the City of San Luis Obispo Groundwater Sustainability Agency (GSA), and groundwater extraction would occur in compliance with SGMA and the approved San Luis Obispo Valley Basin GSP, however, further details are not provided. It is unclear how much groundwater will be extracted from the treatment wells and if an analysis of impacts to interconnected surface waters and groundwater dependent ecosystems was conducted in relation to the operation of the proposed treatment wells.

As stated above, both treatment wells are within approximately 300 feet of San Luis Obispo Creek, and Figure 5-17 of the San Luis Obispo Valley Basin GSP (page 5-33) indicates this location is an area identified as having potential GDEs with an estimated depth to groundwater of less than or equal to 30 feet (SLO GSA 2021). Data from GSP groundwater monitoring sites within this area also indicate depth to groundwater is within this range (DWR 2025). CDFW recommends that the IS/MND include an analysis of Project-related activities in relation to the San Luis Obispo Valley Basin GSP, including analysis of potential undesirable results and adverse impacts to groundwater dependent ecosystems including the biological resources listed above.

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Lake and Streambed Alteration (LSA): Based on GSP groundwater monitoring sites, depth to groundwater in the area of the proposed treatment wells is less than 20 to 30 feet (DWR 2025). The proposed treatment wells may be hydrologically connected to San Luis Creek, and it is unclear if operation of the treatment wells may impact the natural flow of San Luis Creek. These Project activities may be subject to the notification requirement of Fish and Game Code section 1602, which requires an entity 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 (including the removal of riparian vegetation); (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.

CDFW recommends coordination with CDFW staff prior to groundbreaking activities on-site or submission of a Lake or Streambed Alteration (LSA) Notification to determine if the activities proposed within the streams are subject to CDFW's jurisdiction. CDFW is required to comply with CEQA in the issuance of a LSA Agreement; therefore, if the CEQA document approved for this Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for LSA Agreement issuance. For additional information on notification requirements, please contact staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593 or R4LSA@wildlife.ca.gov, or the Program website: <https://wildlife.ca.gov/Conservation/LSA>.

Nesting birds: CDFW recommends that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey 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 advises that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends

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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 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 a compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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 Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, could have an impact on biological resources, and an assessment of filing fees will be 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 operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION


CDFW appreciates the opportunity to comment on the IS/MND to assist the City of San Luis Obispo in identifying and mitigating Project 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>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter.

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If you have any questions regarding this letter or further coordination, please contact Jackson Powell, Environmental Scientist, at the (559) 899-9758 by electronic mail at Jackson.Powell@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

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REFERENCES

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- San Luis Obispo Valley Groundwater Basin Groundwater Sustainability Agencies (SLO GSA). 2021. San Luis Obispo Valley Basin Groundwater Sustainability Plan. October 2021.
- Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of California fish and game commission to list the Crotch's bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

**RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Groundwater Contamination Characterization Project (Project)
STATE CLEARINGHOUSE No.: 2024120528**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
BUOW	
Mitigation Measure 1: BUOW Surveys Prior to Construction	
Mitigation Measure 3: BUOW Take Authorization	
CBB	
Mitigation Measure 4: CBB Habitat Assessment	
Mitigation Measure 5: CBB Surveys	
Mitigation Measure 7: CBB Take Authorization	
<i>During Construction</i>	
BUOW	
Mitigation Measure 2: BUOW Buffers	
CBB	
Mitigation Measure 6: CBB Buffers	