

FINDINGS OF FACT PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Tijuana Estuary Tidal Restoration Program II Phase I SCH: 2021050599 February 2023

I. OVERALL FINDINGS

Pursuant to Section 21081 of the California Environmental Quality Act (CEQA) and Section 15091 of the State CEQA Guidelines, the California Department of Parks and Recreation (CSP) finds as follows:

- A. The Tijuana Estuary Tidal Restoration Program II Phase I (TETRP II Phase I or proposed project) will either have no impact or impacts that are less than significant for the following topic areas:
- Land Use
 - Recreation and Public Access
 - Coastal Processes
 - Geology/Soils
 - Paleontological Resources
 - Visual Resources
 - Transportation
 - Greenhouse Gas Emissions
 - Noise
 - Public Services and Utilities
 - Energy
- B. For the following topics with significant impacts identified in the Final Environmental Impact Report (Final EIR), changes or alterations have been required in, or incorporated into, the conditions of approval that mitigate or avoid each significant impact, as explained in the findings below:
- Hazardous Materials and Public Safety
 - Cultural Resources
 - Tribal Cultural Resources
- C. For the following topics with significant impacts identified in the Final EIR, changes or alterations have been required in, or incorporated into, the proposed project that minimize or reduce the significant impact, but not to a less than significant level, as explained in the findings below, or changes or mitigation measures were considered but identified as

infeasible due to specific economic, legal, social, technological, or other considerations, as explained in the findings below. Thus, these impacts will remain significant and unavoidable. A Statement of Overriding Considerations is being adopted to address these significant and unmitigated impacts:

- Hydrology and Water Quality (temporary)
- Biological Resources (temporary)
- Air Quality (temporary, cumulatively temporary)
- Noise (cumulatively temporary)

These findings are explained below and are supported by substantial evidence in the record of these proceedings, including materials in CSP's files for this proposed project.

II. EXPLANATION OF FINDINGS

CSP has made specific written findings regarding each significant impact associated with the proposed project. Those findings are presented below, along with a presentation of facts in support of the findings. These findings are based on the discussion of impacts in the detailed issue area analyses in the Final EIR, as well as relevant technical reports and responses to comments in the Final EIR. CSP adopts and incorporates by reference the responses to comments as part of these findings. CSP certifies these findings are based on full appraisal of all viewpoints, including all comments received up to the date of adoption of these findings, concerning the environmental issues identified and discussed.

A. Pursuant to California Public Resources Code §21081 and Section 15091(a) (1) of the State CEQA Guidelines, CSP finds that, for each of the following significant impacts as identified in the Final EIR, dated February 2023 for the TETRP II Phase I, changes or alterations (mitigation measures) have been required in, or incorporated into, the proposed project that avoid or substantially lessen each of the significant environmental impacts as identified in the Final EIR. The remaining impacts, if any, are less than significant. The significant impacts and mitigation measures are stated fully in the Final EIR. The following are brief descriptions of the impacts and mitigation measures set forth in the Final EIR and an explanation of the rationale for this finding for each impact.

1. Hazardous Materials and Public Safety Impacts (Less than significant impact with mitigation)

Impact: Impacts associated with beach nourishment from potential exposure of the public participating in water-related recreational activities along the beach to bacteria levels that may exceed health standards will be considered significant.

Mitigation Measure Haz Mat-1: This mitigation measure specified in the Final EIR has been imposed upon the proposed project as a condition of approval, requiring that CSP or their authorized representative notify the County of San Diego Department of Environmental Health and Quality if water quality monitoring conducted for the proposed project identifies water quality violations. CSP or their authorized representative must also coordinate with the County of San Diego to provide advisory and/or closure signage as necessary to alert the public to exposure to potential health hazards.

Rationale: If water quality violations occur due to activities associated with soil management, implementation of Haz Mat-1 will inform the appropriate authorities of the health hazard and the public will be notified so they can avoid the area and hazardous situation until conditions are safe. Thus, implementation of Haz Mat-1 will reduce the potential of the exposure to the public.

2. **Cultural Resources Impacts (Less than significant impact with mitigation)**

Impact: Historic or archaeological resources could be substantially damaged or destroyed during excavation of underlying stable sediments within the project site resulting from restoration and enhancement activities. This damage or destruction of a cultural resource is considered a significant impact.

Mitigation Measure Cultural-1: This detailed mitigation measure within the Final EIR has been imposed upon the proposed project as a condition of approval requiring that a series of actions be implemented before, during, and after construction. The measure includes what actions should occur if archaeological resources or human remains are found during construction. These actions will be outlined in a Monitoring and Discovery Plan that will be prepared and approved by CSP and the U.S. Fish and Wildlife Service's Regional Historic Preservation Officer prior to initiation of the restoration permitting process.

Mitigation Measure Cultural-2: This detailed mitigation measure within the Final EIR has been imposed upon the proposed project as a condition of approval requiring that a qualified archaeological monitor and a Kumeyaay cultural monitor shall be present during any project-related ground-disturbing activity.

Mitigation Measure Cultural-3: This detailed mitigation measure within the Final EIR has been imposed upon the proposed project as a condition of approval requiring that a training session for project construction personnel be conducted by a qualified archaeologist and Kumeyaay cultural monitor prior to the start of ground-disturbing activities.

Mitigation Measure Cultural-5: This detailed mitigation measure within the Final EIR has been imposed upon the proposed project as a condition of approval requiring that exclusionary fencing shall be used to avoid inadvertent disturbance of cultural resources within or in proximity to the area of potential effect, staging areas, and access roads. The temporary exclusionary fencing shall be placed parallel to staging areas or the access road's existing limits of disturbance in locations where they are within 15 feet of the site.

Rationale: Cultural resources are known to the project area as six archaeological resources were recorded within the area of potential effects. Buried stable surfaces below recent sediment deposits may also contain as yet unknown historical or archaeological resources; thus, grading and ground-disturbing activities may have the potential to encounter historical and/or archaeological resources in these stable sediments. Alterations in the proposed project, such as mitigation, have been required that avoid or substantially lessen this impact. Implementation of Mitigation Measures Cultural-1 through 3 and 5 will require monitoring, as well as clear and decisive actions to be taken if a resource is encountered, thus limiting the potential for inadvertent damage to a resource. The requirement for pre-construction contractor meetings will further ensure that, if encountered, cultural resources are recognized and work will stop immediately. Monitoring as applicable during ground-disturbing work will provide for the identification and implementation of appropriate actions to be taken immediately in the field if resources are encountered. Temporary fencing will be placed prior to the start of ground-disturbing activities near known cultural resources sites to protect these sensitive areas. By fencing the site, the potential for construction activities to inadvertently take place near the site and possibly damage the resource is minimized. Implementation of these mitigation measures will reduce potential inadvertent disturbance to unknown archaeological or historic resources to less than significant.

Impact: Unknown human remains could be substantially damaged or destroyed during excavation of underlying stable sediments within the project site resulting from restoration and enhancement activities. This damage or destruction of unknown human remains is considered a significant impact.

Mitigation Measure Cultural-4: This detailed mitigation measure within the Final EIR has been imposed upon the proposed project as a condition of approval requiring a series of actions if human remains are encountered during the proposed project.

Rationale: Similar to other cultural resources, It is possible that undiscovered buried human remains may exist in stable sediments in the area of potential effects

that could be exposed, damaged, or destroyed during excavation or ground-disturbing activities. If human remains were to be encountered, Mitigation Measure Cultural-4 requires that work around the remains will be halted and the remains protected, the appropriate notifications made, and proper handling of the remains be implemented. Thus, the potential impact to unknown human remains will be reduced to less than significant.

3. **Tribal Cultural Resources Impacts (Less than significant impact with mitigation)**

Impact: Unknown Tribal cultural resources could be substantially damaged or destroyed during excavation of underlying stable sediments within the area of potential effects resulting from restoration and enhancement efforts. This damage or destruction of an unknown Tribal cultural resource is considered a significant impact.

Mitigation Measure: See Mitigation Measures Cultural-1 through Cultural-5.

Rationale: Ground-disturbing activities into stable sediments in the area of potential effects could expose unknown Tribal cultural resources. Alterations in the proposed project, such as mitigation, have been required that avoid or substantially lessen this impact. Implementation of Mitigation Measure Cultural-1 through Cultural-5 will require monitoring during ground-disturbing activities in sensitive areas to identify potentially sensitive Tribal cultural resources encountered during project work and ensure the resource is not damaged or altered. Similar to the potential impact to cultural resources, implementation of Mitigation Measures Cultural-1 through 3, and 5 will require monitoring, as well as clear and decisive actions to be taken if a Tribal cultural resource is encountered, thus limiting the potential for inadvertent damage to a resource. Pre-construction contractor meetings will further ensure that, if encountered, Tribal cultural resources are recognized and work will stop immediately. Monitoring will provide for the identification and implementation of appropriate actions to be taken immediately in the field if resources are encountered. Implementation of these mitigation measures will reduce potential disturbance to unknown Tribal cultural resources to less than significant.

- B. Pursuant to Section 15091(a)(3) of the State CEQA Guidelines, CSP finds that, for each of the following significant impacts as identified in the Final EIR, specific economic, legal, social, technological, or other considerations make the mitigation measures or proposed project alternatives to reduce impacts to below significance**

infeasible. The impacts that will remain significant and unavoidable despite implementation of all feasible mitigation measures are as follows:

1. Hydrology and Water Quality (Temporary Significant Impact)

Impact: Soil management activities involving beach nourishment will potentially generate or release pollutants that are in violation of applicable federal or state standards. Bacteria release due to placement of material from the restoration site will contribute incrementally to existing water quality impairments along the beach and has the potential to result in temporary, localized exceedance of regulatory limits (e.g., bacteria). These temporary impacts resulting from soil management activities will be significant.

Mitigation Measure Water-Quality-1: This mitigation measure specified in the Final EIR has been imposed upon the proposed project as a condition of approval requiring that prior to beach nourishment with material excavated from the restoration and/or channel enhancement area, soil testing will be conducted for contamination for regulated constituents (including bacteria).

- a. If testing confirms contamination of soils in conflict with regulations, contaminated soils will be diverted for transport off-site to an appropriate reuse or disposal site.
- b. If testing confirms soils would not conflict with regulatory limits, beach nourishment will be initiated.

Mitigation Measure Water-Quality-2: This mitigation measure specified in the Final EIR has been imposed upon the proposed project as a condition of approval requiring that water quality monitoring be conducted for regulated constituents within 100 feet (down from placement) during beach nourishment. If water quality violations are identified, additional samples will be taken along the beach adjacent to the river mouth and/or other stormwater input locations to confirm violations are due to beach nourishment associated with TETRP II Phase I. If the proposed project is confirmed responsible for water quality violations, then beach nourishment will stop and soils in the immediate area of excavation will be diverted off-site to an appropriate reuse or disposal site. Beach nourishment will continue when excavation has moved to a location expected to have acceptable quality and testing confirms no violations are anticipated. Twice weekly water quality monitoring will be reinitiated to identify additional violations, and provide for diversion, if necessary.

Rationale: Implementation of Mitigation Measure Water Quality-1 and Quality-2 will minimize the potential for and provide information related to water quality

violations, and halt the potential for continued impact. However, testing and monitoring may not identify inactive or dormant bacteria and does not necessarily avoid the impact that has already occurred. Thus, potential temporary impacts to water quality will remain significant and unavoidable.

2. **Biological Resources Impacts (Temporary Significant Impact)**

Impact: If construction continues through the breeding season, construction noise will result in temporary significant impacts to migratory and federally and state-listed special-status bird species. During excavation and construction, noise generated by earth-moving equipment and trucking is mobile and will continually move throughout the site. The dynamic nature of the noise-generating construction equipment throughout the project site will limit the length of time a certain area is exposed to increased noise levels. Overall, noise will increase in adjacent habitats with the potential to nesting birds and, as such, temporary adverse biological impacts on migratory and federally and state-listed bird species as a result of noise associated with construction will occur and will be significant and unavoidable.

Rationale: Potential mitigation measures, including noise walls and restriction of construction activities to outside the breeding season, were considered to reduce adverse indirect noise impacts, which will occur during project construction activities, including restoration grading, channel enhancement, and soil management (trucking along Monument Road within Tijuana River National Estuarine Research Reserve). However, an intervening noise wall within the restoration grading footprint will have to be continually mobile or constructed in unstable soil conditions along the wetland and/or channel edge and will result in direct impacts to adjacent habitat. The impacts associated with construction of the noise walls will reduce or eliminate the value of this noise buffer and, thus, is considered infeasible.

It may be feasible to construct temporary noise walls along Monument Road if work extends into the breeding season, but this will be dependent on the specific conditions. Additionally, noise walls may restrict movement of other species across the road depending on other adjacent habitat types. Upon determination of the need to construct during the breeding season, a detailed feasibility analysis of noise wall construction will be conducted. However, at this time, the proposed project cannot commit to construction of a noise wall that will adequately reduce noise levels of trucking during the breeding season.

A project schedule requiring work to be completely conducted outside of the bird nesting season was considered; however, this will completely halt construction between February 15 and September 1. Depending on the start date for construction,

the stop and start schedule could extend the overall construction duration substantially and the longer construction period could result in additional time of disruption to birds. A longer duration will potentially result in greater impacts than temporary construction noise during the breeding season, in part because the construction equipment will be mobile and only a portion of nesting habitat will be within the range of the construction noise at a given time. Thus, requiring work to occur completely outside of the nesting season was determined infeasible.

Alterations in the proposed project, such as project design features (PDFs), have been required that avoid or substantially lessen this temporary noise impact to sensitive biological species. PDFs have been included in the proposed project to minimize construction equipment noise (PDF-7 and PDF-8). Additionally, removal of vegetation will be limited to outside of the breeding season, and prior to vegetation clearing a pre-construction survey by a qualified biologist will be required (PDF-9 and 10). During construction, areas may be fenced if determined necessary to reduce the ability of light-footed Ridgway's rails to enter active construction zones (PDF-11). Potential mitigation measures such as noise walls and restriction of construction activities to outside the breeding season were considered, but ultimately determined infeasible as outlined above. Because mitigation is not available to eliminate or reduce this temporary noise impact to sensitive biological species associated with the proposed project and soil management activities, it will remain significant and unavoidable.

3. **Air Quality (Temporary Significant Impact, Cumulatively Temporary Significant Impact)**

Impact: Temporary construction emissions associated with the proposed project and soil management activities will result in a significant impact to regional air quality. Construction-generated particulate matter equal to or less than 2.5 micrometers in diameter (PM_{2.5}) emissions will exceed the County's screening level daily thresholds and particulate matter equal to or less than 10 micrometers in diameter (PM₁₀) emissions will exceed the County's daily and annual thresholds.

Mitigation Measure Air Quality (AQ)-1: This mitigation measure requires the construction contractor to reduce fugitive dust emissions associated with off-road equipment and heavy-duty vehicles through measures such as watering exposed soils, stabilizing exposed soils, covering haul trucks and stockpiles, clean paved surfaces, slow speeds on unpaved surfaces, and finish coverings of disturbed areas quickly.

Rationale: Alterations in the proposed project, such as mitigation, have been required that avoid or substantially lessen this impact. Mitigation Measure AQ-1 will reduce fugitive dust emission estimates associated with the enhancement/restoration and soil management activities. With implementation of Mitigation Measure AQ-1, PM_{2.5} emissions will be mitigated below the thresholds of significance. However, PM₁₀ emissions will continue to exceed the daily threshold of significance under CEQA. While Mitigation Measure AQ-1 will substantially reduce PM₁₀ emissions (an approximate 72% reduction in fugitive PM₁₀), PM₁₀ emissions will continue to exceed the threshold of significance. No additional measures were found to be available or feasible to further reduce the proposed project's construction generation of fugitive PM₁₀. Therefore, fugitive dust emissions of PM₁₀ could continue to lead to a violation of an applicable air quality standard. Because impacts must occur for the proposed project to be implemented, this air quality impact will remain significant and unavoidable.

Impact: As discussed above, temporary construction emissions associated with the proposed project and soil management activities will result in a significant impact to regional air quality. Because the proposed project will produce a significant air quality impact in an area that is out of attainment, it is considered to significantly contribute to the cumulative air quality impact.

Mitigation Measure: See Mitigation Measure Air Quality-1.

Rationale: Alterations in the proposed project, such as Mitigation Measure Air Quality-1, have been required that avoid or substantially lessen this impact. However, since details are not available at this time to determine with certainty that mitigation will fully reduce emissions from the proposed project to below a level of significance, the proposed project will potentially make a considerable temporary contribution to a significant cumulative impact related to air quality. Therefore, this impact to air quality will remain significant and unavoidable.

4. **Noise (Cumulatively Temporary Significant Impact)**

Impact: It is possible that multiple projects will have overlapping haul routes in proximity to a residential area such that their noise could combine and result in an exceedance of noise level thresholds. If another cumulative project occurs during the same timeframe as the construction of TETRP II Phase I, impacts due to cumulatively noise levels could be above significant levels at nearby receptors. Thus, in certain circumstances, the proposed project will make a temporary cumulatively considerable contribution to a significant noise impact.

Rationale: As discussed under Biological Resources, it may be feasible to construct temporary noise walls that will help to buffer residential areas from haul

truck noise; however, this will be dependent on the specific conditions, such as available shoulder width and nearby known sensitive habitat or species. Additionally, noise walls may restrict movement of wildlife across the road depending on other adjacent habitat types. Dependent on timing, the ability to construct a noise wall may be restricted due to breeding seasons of sensitive adjacent bird species. Thus, at this time, the proposed project cannot commit to construction of a noise wall that will adequately reduce noise levels of trucking noise that could combine with other projects overlapping haul route noise. Other methods of reducing cumulative noise from haul trucks were not identified. Because mitigation is not available to eliminate or reduce this temporary cumulative noise impact, it will remain significant and unavoidable.

III. PROJECT ALTERNATIVES

CSP chose to consider project impacts and benefits, and public/agency input in the ultimate selection of a Preferred Alternative. Because the proposed project is an enhancement effort focused on improving restoration and enhancement areas, and the ecological function of the estuary system as a whole, substantial time and effort went into the planning for, and avoidance of, short-term and long-term impacts to species and their habitats. The proposed project, previously identified as Alternative 2, is identified as the Preferred Alternative by CSP in the Final EIR. Alternatives to the proposed project were identified in previous reports, as well as from input provided by responsible agencies and interested organizations and individuals. In addition to alternatives associated with the restoration and enhancement activities, CSP also analyzed five options for soil management, which would be consistent under both Alternative 1 and the proposed project. A combination of the proposed soil management options will likely be implemented depending on the suitability of materials, project phasing, and availability to dispose of soil at the locations identified in Options 1 through 5.

Alternative 1

Alternative 1 would result in an initial habitat distribution very similar to that of the proposed project. Approximately 86.8 acres would be restored, including 68.4 acres of intertidal mudflat, low salt marsh, and mid- to high salt marsh; 6.8 acres of intertidal channel; and 11.6 acres of native transitional and upland habitat. Tidal exchange would be established within the restored wetlands by creating two connections to existing sloughs, including one to South Beach Slough and one to the Old River Slough. Alternative 1 would increase the tidal prism by approximately 1.5 million cubic feet (equivalent to approximately 34 acres covered by 1 foot of water) and restore transitional habitat (wetland to upland) along the project site's southern boundary and on the south side of Model Marsh. This alternative would avoid 0.3 acre of transitional habitat and 0.2 acre of native upland habitat located immediately to the north of the northern project boundary; which is an area proposed for wetland restoration under the proposed project. Excavation to restore wetland habitats

under Alternative 1 would generate approximately 585,000 cubic yards of soil. Soil management options would be the same under Alternative 1 and the proposed project.

Alternative 1 includes the largest amount of material removal for restoration and enhancement, thus also requiring the largest volume of material to be addressed as part of soil management. This additional activity results in derivative effects such as a higher volume of truck trips, increased areas of disturbance, and higher noise levels, among others, as compared to the proposed project. In addition, Alternative 1 does not avoid existing, relatively higher quality habitat to the extent that the proposed project does. Thus, the degree of adverse impact for Alternative 1, relative to the proposed project that does not include the higher volume of excavated material or greater disturbance to existing higher quality habitat areas, is typically more severe for most issue areas.

The increased tidal prism associated with the proposed project, achieved with less excavation quantities as compared to Alternative 1, would slightly increase the beneficial impacts of the proposed project, such as improved tidal flow and healthier coastal salt marsh habitats. Beneficial impacts from an increased tidal prism would not occur to the same degree under Alternative 1 as compared to the proposed project. Beneficial impacts associated with the beach and swash zone nourishment, including sea level rise resiliency and a visually enhanced sandy beach, would occur under both Alternative 1 and the proposed project.

Alternative 1 would increase the severity of impacts for most issue areas but would not change significance conclusions for any issue area as compared to the proposed project. This alternative does not substantially lessen the significant impacts associated with the proposed project.

Alternative 1 is undesirable from a public policy standpoint because it would include increased hauling operations due to larger excavation quantities, and more disturbance to the estuary setting. Although Alternative 1 would meet the CEQA objectives, impacts would be greater in extent and degree than impacts identified under the proposed project. Therefore, CSP finds that Alternative 1 is rejected because specific economic, legal, social, and/or other considerations make this alternative infeasible.

No Project/No Action Alternative

The No Project/No Action Alternative would not modify existing conditions and no actions would take place. Under this alternative, the proposed TETRP II Phase I restoration of the estuary would not be completed. Thus, no significant environmental impacts would occur from this alternative. However, implementation of the No Project/No Action Alternative would result in continued deterioration of the estuary habitat and would provide none of the positive and beneficial outcomes that would result from the proposed project. It is anticipated that the estuary would continue to lose wetland habitat to sedimentation and experience further reduced tidal prism as development continues within the upper watersheds of trans-border canyons that terminate at the estuary. Tidal channels would continue to accumulate sediment and may close intermittently, resulting in potentially negative impacts to tidal habitats. The estuary would continue to be affected by periodic

coastal wave action that may result in erosion or overtopping of the barrier beach that shields the wetlands from continuous wave action and impacts from sea level rise. While no significant impacts would occur, none of the beneficial or positive impacts that occur with the implementation of one of the project alternatives would result under the No Project/No Action Alternative.

As a result, the No Project/No Action Alternative does not achieve the CEQA project objectives. Most specifically, it does not achieve the following objectives: (1) increase tidal prism; (2) restore areas of former salt marsh, tidal channel, and mudflat affected by sedimentation; (3) remove sand as needed to maintain an open river mouth to support water quality and reduce hypoxic conditions; (4) restore barrier beach; (5) increase habitat for endangered species; (6) increase areas of undisturbed transition zone; and (7) incorporate research and adaptive management into project design, implantation, and monitoring. This alternative is undesirable from a public policy standpoint because it does not feasibly attain primary objectives of the proposed project. Therefore, CSP finds that the No Project/No Action Alternative is rejected because specific economic, legal, social, and other considerations make this alternative infeasible.

Environmentally Superior Alternative

CEQA requires disclosure of the environmentally superior alternative, and if the No Project/No Action Alternative is environmentally superior, identification of a superior alternative among the other alternatives (Section 15126.6[e][2]). The environmentally superior alternative is generally defined as the alternative that would result in the least adverse environmental impacts to the proposed project site and surrounding area.

The No Project/No Action Alternative would result in the fewest number of significant environmental impacts that are temporary in nature and could be considered environmentally superior for this reason. However, implementation of the No Project/No Action Alternative would result in the continued deterioration of the habitats, vegetation communities, and hydrologic conditions within the project site. No restored coastal salt marsh acreage would be established under the No Project/No Action Alternative, which would render the No Project/No Action Alternative inconsistent with the overall purpose of the project and would not achieve the project objectives. Thus, the following discussion provides identification of an environmentally superior alternative between the two project alternatives.

Between the action alternatives, (Alternative 1, proposed project), the proposed project would result in the least CEQA significant environmental impacts. Due to the reduced excavation quantities, reduced hauling operations, and a lesser amount of disturbance to the estuary setting relative to Alternative 1, many of the impacts that would result from the proposed project would be to a lesser degree and extent than those resulting from Alternative 1. The proposed project is the environmentally superior alternative because it minimizes the disturbance to existing habitats and increases the tidal prism and ability of the system to drain. Soil management that identifies beach nourishment on-site is the environmentally superior alternative as it maximizes beneficial

reuse of material on-site as beach nourishment. As a result of the minimized excavation, maximized beach nourishment, and overall increased benefits, the proposed project achieves the CEQA project objectives, to the fullest extent or to a higher degree than the other action alternative (Alternative 1). Alternative 1 would meet the CEQA project objectives, but impacts would be greater in extent and degree than impacts identified under the proposed project.

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