STATEMENT OF OVERRIDING CONSIDERATIONS

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

Background

Pursuant to Section 21081 of the California Environmental Quality Act (CEQA) and Section 15091 of the State CEQA Guidelines, as explained in the Findings Regarding Significant Impacts, the California Department of Parks and Recreation (CSP) found that changes or alterations have been required in, or incorporated into, the Tijuana Estuary Tidal Restoration Program II Phase I (TETRP II Phase I or proposed project) that minimize or reduce the significant impacts, but **NOT TO A LESS THAN SIGNIFICANT LEVEL** for certain impacts, 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, the following impacts will remain significant and unavoidable:

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

Hydrology and Water Quality (temporary)

Despite the implementation of feasible and reasonable mitigation, soil management activities such as beach nourishment will result in **temporary** water quality impacts. Soil management activities have the potential to 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), resulting in a significant impact to water quality, as described in Section 4.3.3 of the Final Environmental Impact Report (FEIR). Feasible mitigation (Mitigation Measure Water Quality-1 and Quality-2) is included but will not reduce the impact to less than significant, as described in Section 4.3.4 of the FEIR. Mitigation Measure Water Quality-1 and Quality-2 will minimize the potential for water quality violations, and provide information related to water quality violations and halt the potential for continued impact through soil testing and water quality monitoring, respectively. However, neither measure will prevent the potential impact from initially occurring as testing and monitoring may not identify inactive or dormant bacteria and does not necessarily avoid the impact that has already occurred. No additional feasible measures are available to further reduce water quality pollutant release due to soil management activities. Implementation of the proposed mitigation measures will reduce the temporary water quality impacts related to material placement that will

potentially release pollutants in violation of applicable federal or state standards but not fully reduce or avoid the significant impact and the impacts will **REMAIN SIGNIFICANT AND UNAVOIDABLE.**

Biological Resources (temporary)

The proposed project will result in **short-term, temporary** impacts to migratory and federally and state-listed bird species due to the effects of construction noise disrupting sensitive birds foraging or breeding behavior, as described in Section 4.6 of the FEIR. Noise generated by project construction and trucking associated with soil management will be temporary and vary dependent on the work phase, and equipment will require appropriate noise-reducing mufflers and housing for equipment. During excavation and construction, noise generated by earth-moving equipment 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. Additionally, construction noise levels are typically not constant due to times when equipment is not functioning at full engine power, such as worker breaks, change in construction activities, and maintenance.

The noise generated by removal of vegetation outside of the breeding season, as described in the project design features, will limit nesting and species occurrences within the site during those noise-generating construction activities. Overall, because noise will increase in adjacent habitats supporting nesting birds, adverse noise impacts on migratory bird species will occur and will be significant.

The temporary adverse biological impacts on migratory bird species as a result of noise associated with construction will cease at the end of construction or maintenance activities and as the new wetland and upland habitats establish and provide additional habitat options for impacted species. However, potential mitigation measures to further minimize these temporary indirect construction noise impacts are not available. Mitigation measures such as noise walls and restriction of construction activities to outside the breeding season were considered but found infeasible due to potential site condition limitations and additional impacts with constructing noise walls (i.e., wet soils, adequate shoulder/roadway width, sensitive habitat) and the potential for the overall project duration to be longer and more impactful to sensitive species if construction is halted during the breeding season versus continuing implementation throughout the year. Because feasible mitigation is not available to eliminate or reduce the temporary impacts, the short-term biological impacts on sensitive bird species as a result of noise associated with construction will **REMAIN SIGNIFICANT AND UNAVOIDABLE.**

Air Quality (temporary, cumulatively temporary)

Despite the implementation of feasible and reasonable mitigation, the proposed project will result in **temporary** construction-related air quality impacts specific to particulate matter (PM) associated with restoration/enhancement and soil management activities, generally through the

creation of fugitive dust. Construction-generated PM equal to or less than 2.5 micrometers in diameter ($PM_{2.5}$) emissions will exceed the County of San Diego's screening level daily thresholds and PM equal to or less than 10 micrometers in diameter (PM_{10}) emissions will exceed the County's daily and annual thresholds, resulting in a significant impact to regional air quality, as described in Section 4.13 of the FEIR. Feasible mitigation (Mitigation Measure Air Quality-1) is included but will not reduce the impact to less than significant. Mitigation Measure Air Quality-1 will limit and minimize construction-related emissions through measures to reduce fugitive dust emissions associated with off-road equipment and heavy-duty vehicles. With implementation of Mitigation Measure Air Quality-1, $PM_{2.5}$ emissions will be mitigated below the threshold of significance. However, daily PM_{10} emissions will continue to exceed the daily threshold of significance. No additional feasible mitigation measures are available to further reduce air quality emissions relative to fugitive dust. Implementation of the proposed mitigation measure will reduce the temporary construction-related air quality impacts but not fully minimize the significant impact, and the short-term temporary air quality impact related to emission of PM_{10} during construction will **REMAIN SIGNIFICANT AND UNAVOIDABLE.**

As discussed above, **temporary** construction emissions of PM_{10} 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. Feasible mitigation (Mitigation Measure Air Quality-1) is included but will not reduce the impact to less than significant. 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 and it will **REMAIN SIGNIFICANT AND UNAVOIDABLE.**

<u>Noise (cumulatively temporary)</u>

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 temporary 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. As discussed under Biological Resources, noise walls were considered as a mitigation measure but found infeasible due to potential site condition limitations and additional impacts with construction of noise walls (i.e., wet soils, adequate shoulder/roadway width, sensitive habitat). 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. Because feasible mitigation is not available to eliminate or reduce the cumulatively temporary

noise impact, the short-term impact due to cumulative noise levels will **REMAIN SIGNIFICANT AND UNAVOIDABLE.**

Statement of Overriding Considerations

Pursuant to Section 15093 of the State CEQA Guidelines, when the lead agency approves a project that may result in the occurrence of significant impacts that are identified in the FEIR, but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the FEIR and/or other information in the record.

CSP has adopted Findings Regarding Significant Impacts for the proposed project that identify certain significant impacts of implementing the proposed project that are unavoidable even after incorporation of feasible mitigation measures.

CSP finds that the remaining unavoidable significant impacts are acceptable due to each of the specific economic, legal, social, technological, or other benefits that will result from approval and implementation of the proposed project as listed below. These benefits are based on the facts set forth in the Findings Regarding Significant Impacts, the FEIR, and the record of proceedings for the proposed project. Each of these benefits is a separate and independent basis that justifies approval of the proposed project, so that if a court were to set aside the determination that any particular benefit will occur and justifies approval of the proposed project, CSP determines that it would stand by its determination that the remaining benefit(s) is or are sufficient to warrant project approval. This Statement of Overriding Considerations outlines the reasons why CSP has determined that the benefits outweigh the unavoidable adverse environmental effects.

Overriding Benefits

CSP finds that the proposed project will have the following substantial overriding benefits:

1. <u>Improved Habitat Quality and Biological Conditions</u>

Estuary Restoration and Enhancement Activities are designed to enhance the Tijuana Estuary (estuary) and contribute to the ecological function of the estuary. The proposed project establishment of 82.5 acres of native habitat including 62.8 acres of intertidal wetlands, 5.1 acres of intertidal channel, and 14.6 acres of native transitional and upland habitat will result in a permanent net gain of wetland areas post-restoration. Although impacts will occur as identified in the FEIR analysis, they will occur to increase the overall habitat value of the site and increase wetlands within the estuary as a whole. Some permanent habitat conversion is intentional, to increase higher value/functioning habitat at the expense of lower quality habitat currently existing on the site.

Vegetation impacts identified for the proposed project are temporary and are a result of the disturbance that must occur to alter elevations to achieve appropriate wetland conditions and enhance the overall habitat value of the site. The temporary disturbance of habitat within the

project site is unavoidable for implementation of the proposed project. After restoration is complete, higher quality vegetation communities will replace these disturbed areas.

In the long term, the biological improvements, specifically the establishment of wetland areas that expand the functional estuary complex, will be beneficial to certain wildlife species once vegetation has established. The proposed project will generally transform existing, lower quality disturbed habitats to sensitive coastal salt marsh wetland habitats. Lower value habitats will be graded and established as higher quality habitats such as salt marsh and mudflat, with intertidal channel connections. As a result of the proposed project, an increase in overall acreage of high value vegetation communities will occur and resources in the estuary will benefit from the restored hydrologic connectivity throughout the estuary complex. In addition, the proposed project is consistent with the goals and objectives of the City of San Diego's Multi-Habitat Planning Area to maintain and enhance biological diversity in the region and conserve viable populations of endangered, threatened, and key sensitive species and their habitats.

2. Improved Avian Habitat

Following restoration, improved water quality conditions will result in higher biological productivity in restored mudflat areas over the long term and will have direct benefits to foraging birds, such as the light-footed Ridgway's rail, California least tern, western snowy plover, and Belding savannah sparrow as these species' nesting and foraging habitat will increase with implementation of the proposed project. The condition of foraging habitat is also expected to improve as a result of restoration due to improved tidal exchange and sediment/water quality. The improved tidal circulation and restoration to appropriate habitat elevations will enhance environmental conditions for the prey communities that bird species feed on.

3. Improved Fish Habitat

The proposed project will result in long-term beneficial impacts to Essential Fish Habitat by improving water quality and increasing tidal channel and mudflat habitat. The conditions of existing subtidal habitat will also be enhanced by increasing tidal influence within the estuary. This additional habitat will support local fish populations and benefit Essential Fish Habitat within the project area.

4. Improved Water Quality

The proposed project will provide a long-term water quality improvement throughout the estuary by enhancing the ability of the estuary to drain incoming freshwater flows currently inhibited by reduced channel capacity. Localized hydraulic efficiency of the estuary will increase over existing conditions by removing sediment to improve tidal prism and flow exchange, as well as flood protection. Circulation will increase with channel deepening within the restoration area. Overall, alterations to drainage patterns and circulation within the estuary will benefit hydraulic efficiency and biological resources in the estuary. The estuary is currently identified by the Regional Water

Quality Control Board on the Section 303(d) list as water quality impaired by parameters including indicator bacteria, lead, low dissolved oxygen, eutrophic, nickel, pesticides, thallium, toxicity, trash, and turbidity. Implementation of the proposed project will help to address these water quality impairments through natural estuary functions by providing sediment management and altering drainage patterns and circulation to improve existing constrictions that restrict freshwater drainage, as well as tidal flow and water circulation.

5. Support Coastal Wetland Ecology

San Diego coastal wetlands have experienced substantial transformations over the past century due to human development and influence. The San Diego region once had a vast network of coastal wetlands; however, development and urban pressures have fragmented this network and impaired the coastal estuaries that remain. Coastal systems in San Diego provide critical functions in support of wildlife and plant species, including migratory shorebird habitat, habitat for various federally and state-listed species, and nursery and refugia for fish species. Historically, the estuary supported a variety of habitats, including intertidal mudflat and saltmarsh. Existing estuary habitat has experienced considerable changes to the range of habitats and ecosystem function. Overall, an approximately 50% decrease in subtidal and mudflat habitats, and a 42% decrease in salt marsh has occurred. While the proposed project will create a substantial change to the existing estuary environment, the modifications are considered an improvement and biologically beneficial, as coastal salt marsh/wetland habitats are a valuable resource that has historically decreased in the region. The proposed project will result in a net gain of more biologically productive habitat with the restoration of a functional mix of tidal salt marsh habitats. Thus, overall changes to the natural environment as a result of the proposed project are considered beneficial to the broader estuary ecosystem. In addition, the proposed project will work towards achieving the restoration goals and objectives of the Tijuana River National Estuarine Research Reserve Comprehensive Management Plan to restore degraded natural habitats.

6. Sea Level Rise Adaptation

Implementation of the proposed project will improve the ability of the estuary to adapt to anticipated future sea level rise. The proposed project restoration design is based on the consideration of potential climate change impacts including sea level rise. Grading of the project site to create slopes with a gradual habitat gradient will create opportunities both for near-term wetland function as well as future wetland function since enhancement will allow for upslope migration of salt marsh in response to sea level rise. With the anticipated design, the proposed project aims to create a more resilient ecosystem that can better accommodate future climate change scenarios, including sea level rise. In addition, soil management Options 3 through 5 provide soft, natural solutions through beach nourishment consistent with Sea-Level Rise Policy Guidance by including soft solutions as a component to shoreline protection.

7. Vector Control

Increased circulation and reduction of impounded water from implementation of the proposed project will result in benefits for mosquito abatement. These improvements will increase water flow and salinity levels, thereby reducing the ability of vector species, such as *Culex tarsalis*, *C. pipiens*, and *C. peus*, which are known transmitters of brain encephalitis like West Nile Virus to human hosts and other mammals, to reproduce. The proposed project will result in a less-conducive vector breeding condition and reduce the public health and safety risk associated with mosquito-borne diseases compared to existing conditions.

8. Beneficial Reuse of Material

Soil management activities proposed as part of TETRP II Phase I will involve excavation, requiring up to 514,000 cubic yards net export of soils from the restoration footprint and channel enhancement area. The proposed project will prioritize beach nourishment, and will place excavated material within the swash zone or on dry portions of the beach depending on ultimate sand content and grain size of material available for beneficial reuse. This strategy will support the project objective of beach restoration and will support barrier dune development as well as minimize the need for transport of material longer distances from the project site.

9. Employment Opportunity

Implementation of the proposed project will generate new construction employment opportunities over the multi-year construction period. Employment opportunities will continue during proposed project operation for maintenance, if identified. This will provide an economic benefit to the community, and potentially the region as a whole.

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