

RESOLUTION NUMBER R- 298378

ADOPTED ON SEP 16 2003

WHEREAS, Dr. Gerald Handler, Applicant, and Kimley-Horn and Associates, Inc., Engineer, submitted an application to the City of San Diego for a Resource Protection Ordinance Permit, Tentative Map, and rezone for the Otay Mesa East - Pts No. 3159 project; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the issue was heard by the City Council on SEP 16 2003, 2003; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration, LDR No. 99-0555; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that Mitigated Negative Declaration, LDR No. 99-0555, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the land use actions for the Otay Mesa East - Pts No. 3159 project.

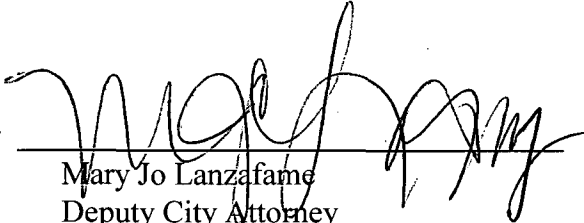
BE IT FURTHER RESOLVED, that the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial

Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the office of the City Clerk and incorporated by reference, is approved.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

APPROVED: CASEY GWINN, City Attorney

By   
Mary Jo Lanzafame  
Deputy City Attorney

MJL:cdk  
08/28/03  
Or.Dept:DSD  
R-2004-263  
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## EXHIBIT A

### MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101.

Otay Mesa East: REZONE/VESTING TENTATIVE MAP, OTAY MESA DEVELOPMENT DISTRICT ORDINANCE AMENDMENT AND RESOURCE PROTECTION ORDINANCE PERMIT (RZ/VTM/OMDD/RPO) which includes a proposal to rezone the 45.5-acre vacant project site from A1-10 (Agricultural) to Otay Mesa Development District - Commercial Subdistrict (OMDD-C). The project also proposes the subdivision of 13 legal lots consisting of 9 commercial lots (Lots 1-8 and 12) with 1,302 parking spaces on 32.1 developable acres; three open space lots (Lots 9-10 and 13), and construction of a private underground sewer pump station on 0.4 acres of land at the northeast corner of the site (Lot 11). Included in the project proposal is the preservation of the 1.3-acre wildlife corridor and MHPA in the northeast corner of the site adjacent to the existing 6-foot wildlife underground tunnel at Otay Mesa Road and Corporate Center Drive. Four acres will be designated as open space to protect the MHPA on the southern boundary of the site. An additional six acres on the eastern boundary of the project site will be designated as open space and includes a fenced preserve for 22 existing vernal pools and one road pool located in the southeast corner of the property. The project site is located at Otay Mesa Road and Corporate Center Drive within the Otay Mesa Community Planning Area. Applicant: Dr. Gerald Handler.

#### V. MITIGATION, MONITORING AND REPORTING PROGRAM (MMRP):

##### **MMRP Deposit**

After project approval by the Decisionmaker and prior to issuance of any discretionary approval(s), the applicant shall submit a deposit of \$3,200 to the Development Project Manager in Development Services Department to cover the City's costs associated with implementation of the Mitigation, Monitoring and Reporting Program (MMRP).

##### **Land Use**

#### 1. Multi-Habitat Planning Area (MHPA) Land Use Adjacency Guidelines

The project site is located adjacent to the Multi-Habitat Planning Area (MHPA), therefore, the following Land Use Adjacency Guidelines will be made conditions of project approval:

- a. Lighting of all developed areas adjacent to the MHPA shall be directed away from the MHPA, or development shall provide adequate shielding with non-invasive (preferably native) plant materials, berms, or other measures.
- b. The release of toxins, chemicals, petroleum products, exotic plant materials and other harmful elements to the MHPA shall be prevented. Drainage from all developed areas adjacent to the MHPA shall be directed away from the MHPA, or if not possible, must not drain directly into the MHPA, but instead into sedimentation basins, grassy swales, and/or properly filtered mechanical trapping devices.
- c. No invasive non-native plant species shall be introduced into areas adjacent to the MHPA.
- d. New development adjacent to the MHPA will be required to provide barriers along MHPA boundaries to direct public access.
- e. Uses in or adjacent to the MHPA should be designed to minimize noise impacts. Berms or walls should be constructed adjacent to uses that may introduce noises that could impact or interfere with wildlife utilization of the MHPA. (See Biological Resources, D. Prior to Construction, 1. & 2., for additional requirements).

2. Protocol surveys

- a. United States Fish & Wildlife Service (USFWS) protocol surveys for endangered or threatened bird and amphibian species are well established and must be followed. In addition, a number of animal species are "covered" under the MSCP, and species-specific requirements are included within that document. Generally, the most appropriate time of year to remove vegetation while minimizing impacts to nesting birds and birds covered under the Migratory Bird Treaty Act, is between generally August and February. Outside of that period, site specific examinations of habitat to be impacted should be conducted by qualified (and where necessary, permitted) biologists to determine the status of nesting birds in the vicinity of the project prior to the initiation of construction activities.
- b. Protocol surveys for California gnatcatcher, as described below, shall be required each year prior to March 1, if construction work would continue into the current breeding season. A review of the effectiveness of all sound attenuation devices and mitigation measures that have been implemented would be required to insure that the species would continue to be protected during the current breeding season.

3. Qualified Biologist responsibility

A qualified biologist (possessing a valid Endangered Species Act Section 10(a)(1)(a) recovery permit) shall survey the habitat areas inside and outside the MHPA that would be subject to construction noise levels exceeding 60 decibels dB(A) hourly

average for the presence of California gnatcatcher. Surveys shall be conducted pursuant to the protocol survey guidelines established by the U.S. Fish and Wildlife Service. If California Gnatcatcher are present, then the following conditions must be met:

- a. At least two weeks prior to the commencement of construction activities, under the direction of a qualified acoustician, noise attenuation measures (e.g., berms, walls) shall be implemented to ensure that noise levels resulting from construction activities will not exceed 60 dB(A) hourly average at the edge of occupied habitat. Concurrent with the commencement of construction activities and the construction of necessary noise attenuation facilities, noise monitoring shall be conducted at the edge of the occupied habitat area to ensure that noise levels do not exceed 60 dB(a) hourly average. If the noise attenuation techniques implemented are determined to be inadequate by the qualified acoustician or biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season, as noted above.
- b. Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.
- c. An analysis showing that noise generated by construction activities would not exceed 60 dB(A) hourly average at the edge of occupied habitat must be completed by a qualified acoustician (possessing current noise engineer license or registration with monitoring noise level experience with listed animal species) and approved by the City Manager at least two weeks prior to the commencement of construction activities. The analysis shall include a map locating the sound monitoring equipment, location of the habitat to be protected and the 60dB(A) sound contour.
- d. Prior to the commencement of construction activities that would disturb California gnatcatcher during the breeding season, the Biologist shall ensure that all fencing, staking and flagging identified as necessary on the ground have been installed properly in the areas restricted from such activities.
- e. If noise attenuation walls or other devices are required to assure protection to identified wildlife, then the biologist shall ensure that such devices have been properly constructed, located and installed.

- f. If California gnatcatcher is not detected during the protocol survey, the qualified biologist shall submit substantial evidence to the City Manager and applicable resource agencies which demonstrates whether or not mitigation measures such as noise walls are necessary between March 1 and August 15. If this evidence concludes that no impacts to California gnatcatcher are anticipated, no mitigation measures would be necessary.
- g. If the applicant chooses not to do conduct the required surveys, then DSD shall assume that California gnatcatcher are present and all necessary protection and mitigation measures shall be required.
- h. If no surveys are completed and no sound attenuation devices are installed, it will be assumed that the habitat in question is occupied by California gnatcatcher and that construction activities would generate more than 60dB(A) within or adjacent to the habitat requiring protection. All such activities adjacent to the protected habitat will cease from March 1 to August 15 and a limits of work will be established by a qualified Biologist on the ground.
- i. Any construction activities inside the MHPA where the occurrence of the following species has been determined to be present must include an impact avoidance area as follows:
  - (a) 300 feet from any nesting site of Cooper's hawk (*Accipiter cooper*)
  - (b) 1,500 feet from known locations of the southern pond turtle (*Clemmys marmorata pallida*)
  - (c) 900 feet from any nesting sites of northern harriers (*Circus cyaneus*)
  - (d) 4,000 feet from any nesting sites of golden eagles (*Aquila chrysaetos*)
  - (e) 300 feet from any occupied burrow or burrowing owls (*Speotyto cunicularia hypogaea*)

### **Biological Resources**

#### **1. Mitigation of Direct Impacts**

Prior to the preconstruction meeting, direct impacts to 31.80 acres of Tier IIIB habitat shall be mitigated to the satisfaction of the City Manager in accordance with the City of San Diego's Land Development Code, Biological Guidelines (July 2002) through one of the following options: (a) on-site preservation within and outside of the MHPA, (b) off-site acquisition within the MHPA, or c) a combination of (a) and (b).

#### **2. Plan Check**

Prior to the issuance of the first grading permit, the Environmental Review Manager (ERM) of Land Development Review (LDR) shall verify that the requirements for Biological Monitoring have been noted on the appropriate construction documents (Sheet 1 or 2, and/or site/grading plans and/or specifications). These include, but are not limited to all MMRP text, grading limits, MHPA boundaries, open space boundaries, location of other Environmentally Sensitive Lands (ESL), location of construction work areas and staging areas; and, a note that states:

“All clearing, grubbing, grading, or other construction activities within and outside the MHPA will be restricted during the breeding season where development may impact California gnatcatcher between March 1 and August 15 known or suspected to be present within and adjacent to the project site.”

3. Prior to the First Preconstruction (Precon) Meeting

- a. The applicant shall provide a letter of verification to the ERM of LDR stating that a qualified Biologist, as defined in the City of San Diego Biological Resources Guidelines (July 2002) has been retained to implement the monitoring program.
- b. At least thirty days prior to the Precon meeting, a second letter shall be submitted to Mitigation Monitoring Coordination (MMC) which shall include the names of the qualified Biologists and the names of all persons involved in the biological monitoring of the project.
- c. At least thirty days prior to the Precon meeting the qualified Biologist shall report to the ERM of LDR the status of any special reports, maps, plans and time lines, including, but not limited to, revegetation plans, plant relocation requirements and timing, avian or other wildlife protocol surveys, impact avoidance areas described below, or other such information.
- d. Impacts to Multiple Species Conservation Program (MSCP) non-covered federal or state-listed species shall be avoided to the extent practical, and shall not be impacted without separate state and/or federal permitting, as may be required.

4. Precon meeting

- a. Prior to beginning any work that requires monitoring, the applicant shall arrange a Precon meeting that shall include the Biologists, Construction Manager and/or Grading Contractor, Resident Engineer (RE) and MMC. The qualified Biologist shall attend any grading-related Precon meetings to make comments and/or suggestions concerning the biological monitoring program with the Construction Manager and/or Grading Contractor.
- b. The biologist should be prepared to introduce any pertinent information concerning protection of sensitive resources, including, but not limited to, vernal pools and their watersheds, breeding season restrictions for California gnatcatcher and the locations to be monitored and/or protected, flagging of individual plants or small plant groups, limit of grade fencing, silt fencing, including the proposed location, such as, 10-foot or less off-set inside the limit of grading, or up against and just inside of the limit of grading fencing.
- c. If the Monitor is not able to attend the Precon meeting, the RE, will schedule a focused Precon meeting for MMC, EAS staff, as appropriate, biological monitors, Construction Manager and appropriate Contractor's representatives to meet and review the job on-site prior to start of any work that requires monitoring.

- d. Prior to the Precon meeting, the Biologist shall submit to MMC a copy of the site/grading plan (reduced to 11x17) that identifies areas to be protected, fenced and monitored, including the location of sound monitoring equipment. This data shall include all planned locations and design of noise attenuation walls or other devices.
  - e. At the Precon meeting, the Biologist shall also submit a construction schedule to MMC through the RE, indicating when and where monitoring is to begin and shall notify MMC of the start date for monitoring.
5. Prior to Start of Construction
- a. Prior to the start of grading, the Biologist shall insure that all measures have been taken to protect the existing vernal pools including, but not limited to, permanent fencing and signs, fencing for grading limits and erosion control, location and extent of Brush Management activities, to protect the vernal pool watersheds, identification signs and controlled access. (See Vernal Pool Management Plan).
  - b. Prior to the start of mass grading, a biologist with a current U.S. Fish and Wildlife Service (USFWS) recovery permit issued by the under Section 10(a)(1)(A) of the Endangered Species Act of 1973 shall conduct a Quino checkerspot butterfly survey weekly for the duration of the five-week survey season for non-excluded portions of the site, generally during the month of February or early March. The project biologist shall recommend all appropriate protection measures and mitigation requirements which shall then be implemented as part of the MMRP for this project.
  - c. To insure that butterfly surveys are initiated during the beginning of the flight season, the Service will monitor the phenology of Quino larvae and their host plants to determine the beginning of the five-week survey season and announce the opening at least one week in advance. Questions regarding the protocol or its application to the proposed project should be sent by email to: [fwlquino@fws.gov](mailto:fwlquino@fws.gov). The project biologist shall recommend all appropriate protection measures and mitigation requirements which shall then be implemented as part of the MMRP for this project.
  - d. Prior to the start of mass grading, a survey shall be conducted during the flowering season, typically May to June, to determine the presence or absence of Otay tarplant, not only associated with vernal pools, but in other areas of the site that may have suitable habitat. The project biologist shall recommend all appropriate protection measures and mitigation requirements which shall then be implemented as part of the MMRP for this project.
  - e. Prior to start of mass grading, a burrowing owl survey, using appropriate protocols, shall be conducted in suitable habitat to determine the presence or absence of this species and the location of any active burrows. The on-site area



shall be evaluated for its potential as foraging habitat for owls occurring south of the property. The project biologist shall recommend all appropriate protection measure and mitigation requirements which shall then be implemented as part of the MMRP for this project.

6. During Construction

- a. No clearing, grubbing, or grading of occupied habitat shall be permitted within areas from such activities that have been staked or fenced under the supervision of a qualified biologist.
- b. The qualified Biologist shall be present full-time during the first stages of grading and as needed, thereafter, and shall document activity via the Consultant Site Visit Record. This record shall be sent to the RE, site presence each month. The RE will forward copies to MMC.
- c. The Biologist shall notify MMC and the RE in writing of the end date of monitoring.

7. Post Construction

- a. The Biologist shall be responsible for ensuring that all field notes and reports have been completed, all outstanding items of concern have been resolved or noted for follow up, and that focused studies are completed, as appropriate.
- b. Within three months following the completion of monitoring, two copies of the Final Biological Monitoring Report (even if negative) and/or evaluation report, if applicable, which describes the results, analysis, and conclusions of the Biological Monitoring Program (with appropriate graphics) shall be submitted to MMC for approval by the ERM of LDR
- c. For any unforeseen additional biological resources impacted during monitoring, the rehabilitation, revegetation or other such follow up action plans shall be included as part of the Final Biological Monitoring Report. Additional mitigation measures may also be required.
- d. MMC shall notify the RE of receipt of the Final Biological Monitoring Report.

8. Vernal Pool Management

- a. The applicant shall insure the City Manager that the preserved portion of the Handler parcel is in a conservation easement in favor of the City ( Parks and Recreation Department) and/or has been dedicated in fee title to the City.
- b. The applicant shall notify the ERM in writing when all construction activities adjacent to the vernal pool preserve have been completed.
- c. The applicant shall be responsible for long term management and maintenance of the vernal pool preserve and shall implement the Vernal Pool Management Plan.

9. Vernal Pool Management Plan

This plan provides the guidelines for maintenance and protection of the biological resources on site. The goal is to protect and maintain in perpetuity the vernal pool habitat on site. Long term maintenance of the site shall be of a passive nature and includes activities, such as weed control, fence repair, sign maintenance and trash removal. Maintenance activities shall be coordinated by the applicant's qualified vernal pool biological monitor (VP monitor) with MSCP, EAS, MMC, P&R and other City staff.

a. Weed Control

- (1) Weed eradication shall be part of the normal maintenance activities. As weed become evident, they shall be removed by hand, mechanical means or controlled with the proper herbicides. Within the vernal pools, weed removal shall be accomplished by hand or hoe. No herbicide use shall be permitted within the vernal pools. Limited mechanical removal and herbicide use may be incorporated in the adjacent upland areas.
- (2) Cover of bent grass (*Agrostis* sp.) and Italian ryegrass (*Lolium multiflorum*) shall not exceed one percent.
- (3) Total cover of other non-native weed species anticipated to encroach upon the vernal pools such as African brass buttons (*Cotula coronopifolia*), grass poly (*Lythrum hyssopifolium*), curly dock (*Rumex crispus*), rabbitfoot grass (*Polypogon monspeliensis*) and filaree (*Erodium* sp.) shall not exceed five percent.
- (4) Weeds in the upland portion of the preserved area including but not limited to fennel (*Foeniculum vulgare*), tree tobacco (*Nicotian Galuca*), yellow star thistle (*Centaurea melitensis*), mustard (*Brassica* Spp.), filaree (*Erodium* SPP.) and tumbleweed (*Salsola tragus*) shall be controlled such that they do not exceed five percent of the site.
- (5) Non-native grasses such as brome grass (*Bromus* sp.) and wild oats (*Avena* sp.) within the upland portion of the preserve shall be controlled such that they do not exceed 25 percent of the upland area and/or do not threaten the continued survival of the preserved vernal pool habitat.
- (6) The vernal pool biological monitor shall evaluate the success of the weed control effort and determine the need for additional weed control.

b. Fence and Sign Repair

Black vinyl-clad fencing and appropriate signs (to be coordinated with MSCP staff) shall be maintained in perpetuity by the maintenance contractor around the preserved vernal pool area to protect the site from unauthorized encroachment. The VP monitor shall ensure that all preserve signage is intact and visible. Any damaged or missing signs shall be repaired or replaced in a timely manner.

c. Trash and Debris Removal

The preserve area shall be kept free of trash and debris and shall be checked regularly in accordance with the established maintenance schedule by the maintenance contractor. Dead wood and leaf litter from native plants shall not be removed from the preserve.

d. Remedial Measures

Remedial measures, in addition to regular maintenance activities addressed above, shall be conducted by the VP Monitor, as required, in response to specific, unforeseen problems on site. Remedial measures may include activities such as invasive plant control, installation of erosion control features, erection of additional fencing and vehicle barriers and seeding of the preserve area.

e. Maintenance Schedule

General maintenance visits shall be conducted twice per year. During each of these visits all trash shall be removed and all fences and signs shall be checked. Weed control visits shall be conducted monthly from January through May of each year. The timing of the visits is intended to coincide with the rainy season and may be altered by project's long-term biological monitor, if necessary. During each monthly visit the pools and upland area are to be weeded. Additional visits may be necessary (estimated to be no more than one per year on average) if problems arise requiring immediate action. Additional maintenance visits may also be required if deemed necessary by the VP monitor in consultation with MSCP and other City staff as appropriate.

f. Monitoring Activities

- (1) Biological monitoring of the preserved areas must be conducted in order to endure long-term survival of the vernal pools habitat. The VP Monitor shall be responsible for the long-term biological monitoring of the preserved areas. The VP Monitor must have experience with vernal pool habitat restoration.
- (2) Monitoring visits shall be conducted four times per year. The first visit shall occur in the fall to assess the potential for weed problems in the upcoming rainy season and provide direction to the maintenance contractor. The next two visits shall be conducted in January and March. The final visit shall be conducted in May and shall be timed to coincide with the peak flowering period on the vernal pool flora
- (3) The exact timing of the monitoring visits shall vary from year to year, depending on site conditions in accordance with 5. G. (2) above. During each monitoring visit, the biologist shall inspect the entire preserve area. Fences and signs shall be checked for damage. Permanent photographic observation points shall be established to record progress photographically over time. Photographs and detailed notes concerning overall status of the preserved area shall be taken. Species cover and richness within the vernal pool and upland habitats shall be visually estimated.

g. Reporting

Following the final monitoring visit each year, the VP monitor shall prepare a letter evaluating the state of the preserved vernal pool habitat to date, along with any recommended remedial measures. Copies of the letter shall be submitted to the MSCP, EAS, MMC and other City staff, as appropriate. The Applicant shall be responsible for carrying out the measures addressed in the letter and any issues or concerns raised as a result of City staff review.

h. Changes to Vernal Pool Management Plan

Any changes to this Vernal Pool Management Plan, based on the results of the yearly monitoring reports and/or changes in site conditions must be approved by City staff (EAS and MSCP) prior to implementation.

**Historical Resources (Archaeology)**

**Prior to Preconstruction (Precon) Meeting**

1. Land Development Review (LDR) Plan Check

Prior to the issuance of a Notice to Proceed (NTP) or any permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the Environmental Review Manager (ERM) of LDR shall verify that the requirements for archaeological monitoring and Native American monitoring, if applicable, have been noted on the appropriate construction documents.

2. Letters of Qualification have been submitted to ERM

Prior to the recordation of the first final map, NTP, and/or, including but not limited to, issuance of a Grading Permit, Demolition Permit or Building Permit, the applicant shall provide a letter of verification to the ERM of LDR stating that a qualified Archaeologist, as defined in the City of San Diego Historical Resources Guidelines (HRG), has been retained to implement the monitoring program.

3. Second Letter Containing Names of Monitors has been sent to Mitigation Monitoring Coordination (MMC)

- a. At least thirty days prior to the Precon Meeting, a second letter shall be submitted to MMC which shall include the name of the Principal Investigator (PI) and the names of all persons involved in the Archaeological Monitoring of the project.
- b. MMC will provide Plan Check with a copy of both the first and second letter.

4. Records Search Prior to Precon Meeting

At least thirty days prior to the Precon Meeting the qualified Archaeologist shall verify that a records search has been completed and updated as necessary and be prepared to introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities. Verification includes, but is not limited to, a copy of a confirmation letter from South Coast Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed.

## **Precon Meeting**

### **1. Monitor Shall Attend Precon Meetings**

- a. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the Archaeologist, Construction Manager and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist shall attend any grading related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.
- b. If the Monitor is not able to attend the Precon Meeting, the RE or BI, if appropriate, will schedule a focused Precon Meeting for MMC, EAS staff, as appropriate, Monitors, Construction Manager and appropriate Contractor's representatives to meet and review the job on-site prior to start of any work that requires monitoring.

### **2. Identify Areas to be Monitored**

At the Precon Meeting, the Archaeologist shall submit to MMC a copy of the site/grading plan (reduced to 11x17) that identifies areas to be monitored as well as areas that may require delineation of grading limits.

### **3. When Monitoring Will Occur**

Prior to the start of work, the Archaeologist shall also submit a construction schedule to MMC through the RE or BI, as appropriate, indicating when and where monitoring is to begin and shall notify MMC of the start date for monitoring.

## **During Construction**

### **1. Monitor Shall be Present During Grading/Excavation**

The qualified Archaeologist shall be present full-time during grading/excavation of native soils and shall document activity via the Consultant Site Visit Record. This record shall be sent to the RE or BI, as appropriate, each month. The RE, or BI as appropriate, will forward copies to MMC.

### **2. Discoveries**

#### **a. Discovery Process**

In the event of a discovery, and when requested by the Archaeologist, or the PI if the Monitor is not qualified as a PI, the RE or BI, as appropriate, shall be contacted and shall divert, direct or temporarily halt ground disturbing activities in the area of discovery to allow for preliminary evaluation of potentially significant archaeological resources. The PI shall also immediately notify MMC of such findings at the time of discovery. MMC will coordinate with appropriate LDR staff.

b. Determination of Significance

The significance of the discovered resources shall be determined by the PI in consultation with LDR and the Native American Community, if applicable. LDR must concur with the evaluation before grading activities will be allowed to resume. For significant archaeological resources, a Research Design and Data Recovery Program shall be prepared, approved by DSD and carried out to mitigate impacts before ground disturbing activities in the area of discovery will be allowed to resume.

3. Human Remains

If human remains are discovered, work shall halt in that area and the following procedures set forth in the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) will be taken:

a. Notification

- (1) Archaeological Monitor shall notify the RE or BI as appropriate, MMC and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS).
- (2) The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

b. Isolate discovery site

- (1) Work shall be redirected from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenance of the remains.
- (2) The Medical Examiner, in consultation with the PI, shall determine the need for a field examine to determine the provenance.
- (3) If a field examination is not warranted, the Medical Examiner, shall determine with input from the PI, if the remains are or are most likely to be of Native American origin.

c. If Human Remains are determined to be Native American

- (1) The Medical Examiner shall notify the Native American Historic Commission (NAHC). (By law, **ONLY** the Medical Examiner can make this call).
- (2) The NAHC will contact the PI within 24 hours of sooner, after the Medical Examiner has completed coordination.
- (3) NAHC will identify the person or persons determined to be the Most Likely Descendent (MLD) and provide.
- (4) The PI will coordinate with the MLD for additional consultation.
- (5) Disposition of Native American Human Remains will be determined between the MLD and the PI IF:
  - (a) The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 24 hours after being notified by the Commission; OR;

(b) The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner, the land owner or their authorized representative shall re-inter the human remains and all associated grave goods with appropriate dignity, on the property in a location not subject to subsurface disturbance. Information on this process will be provided to the NAHC.

d. If Human Remains are **NOT** Native American

- (1) The PI shall contact the Medical Examiner and notify them of the historic era context of the burial.
- (2) The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98).
- (3) If the remains are of historic origin, they shall be appropriately removed and conveyed to the Museum of Man for analysis. The decision for reinterment of the human remains shall be made in consultation with MMC, EAS, the land owner and the Museum of Man.

4. Night Work

a. If night work is included in the contract

- (1) When night work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
- (2) The following procedures shall be followed.
  - (a) No Discoveries  
In the event that nothing was found during the night work, The PI will record the information on the Site Visit Record Form.
  - (b) Potentially Significant Discoveries  
If the PI determines that a potentially significant discovery has been made, the procedures under **During Construction**; 2.,a. & b, will be followed, with the exception that the PI will contact MMC by 8AM the following morning to report and discuss the findings.

b. If night work becomes necessary during the course of construction

- (1) The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
- (2) The RE, or BI, as appropriate, will notify MMC immediately.

c. All other procedures described above will apply, as appropriate.

5. Notification of Completion

The Archaeologist shall notify MMC and the RE or the BI, as appropriate, in writing of the end date of monitoring.

**Post Construction**

1. Handling and Curation of Artifacts and Letter of Acceptance

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- a. The Archaeologist shall be responsible for ensuring that all cultural remains collected are cleaned, catalogued, and permanently curated with an appropriate institution; that a letter of acceptance from the curation institution has been submitted to MMC; that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.
  - b. Curation of artifacts associated with the survey, testing and/or data recovery for this project shall be completed in consultation with LDR and the Native American representative, as applicable.
2. Final Results Reports (Monitoring and Research Design And Data Recovery Program)
    - a. Prior to the release of the grading bond, two copies of the Final Results Report (even if negative) and/or evaluation report, if applicable, which describes the results, analysis, and conclusions of the Archaeological Monitoring Program (with appropriate graphics) shall be submitted to MMC for approval by the ERM of LDR.
    - b. For significant archaeological resources encountered during monitoring, the Research Design And Data Recovery Program shall be included as part of the Final Results Report.
    - c. MMC shall notify the RE or BI, as appropriate, of receipt of the Final Results Report.
  3. Recording Sites with State of California Department of Park and Recreation  
The Archaeologist shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Results Report.

### **Paleontological Resources**

#### **Prior to preconstruction (precon) meeting**

1. Land Development Review (LDR) Plan Check  
Prior to the issuance of a Notice to Proceed (NTP) or any permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the Environmental Review Manager (ERM) of LDR shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.
2. Letters of Qualification have been Submitted to ERM  
Prior to the recordation of the first final map, NTP, and/or, including but not limited to, issuance of a Grading Permit, Demolition Permit or Building Permit, the applicant



shall provide a letter of verification to the ERM of LDR stating that a qualified Archaeologist, as defined in the City of San Diego Paleontological Guidelines, has been retained to implement the monitoring program.

3. Second Letter Containing Names of Monitors has been sent to Mitigation Monitoring Coordination (MMC).
  - a. At least thirty days prior to the Precon Meeting, a second letter shall be submitted to MMC which shall include the name of the Principal Investigator (PI) and the names of all persons involved in the Paleontological Monitoring of the project.
  - b. MMC will provide Plan Check with a copy of both the first and second letter.
  
4. Records Search Prior to Precon Meeting

At least thirty days prior to the Precon meeting, the qualified Paleontologist shall verify that a records search has been completed, and updated as necessary, and be prepared to introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities. Verification includes, but is not limited to, a copy of a confirmation letter from the San Diego Natural History Museum, other institution, or, if the record search was in-house, a letter of verification from the PI stating that the search was completed.

#### **Precon Meeting**

1. Monitor Shall Attend Precon Meetings
  - a. Prior to beginning of any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the Paleontologist, Construction Manager and/or Grading Contractor, Resident Engineer (RE), Building inspector (BI), and MMC. The qualified Paleontologist shall attend any grading related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring Program with the Construction Manager and/or Grading Contractor.
  - b. If the Monitor is not able to attend the Precon Meeting, the RE, or BI as appropriate, will schedule a focused Precon Meeting for MMC, Monitors, Construction Manager and appropriate Contractor's representatives to meet and review the job on-site prior to start of any work that requires monitoring.
  
2. Identify Areas to be Monitored

At the Precon Meeting, the Paleontologist shall submit to MMC a copy of the site/grading plan (reduced to 11x17) that identifies areas to be monitored.
  
3. When Monitoring Will Occur

Prior to the start of work, the Paleontologist also shall submit a construction schedule to MMC through the RE, or BI, as appropriate, indicating when and where monitoring is to begin and shall notify MMC of the start date for monitoring.

## **During Construction**

### **1. Monitor Shall be Present During Grading/Excavation**

The qualified Paleontologist shall be present full-time during the initial cutting of previously undisturbed formations with high and moderate resource sensitivity, and shall document activity via the Consultant Site Visit Record (form). This record shall be faxed to the RE, or BI as appropriate, and MMC each month.

### **2. Discoveries**

#### **(1) Minor Paleontological Discovery**

In the event of a minor Paleontological discovery (small pieces of broken common shell fragments or other scattered common fossils) the Paleontologist shall notify the RE, or BI as appropriate, that a minor discovery has been made. The determination of significance shall be at the discretion of the qualified Paleontologist. The Paleontologist will continue to monitor the area and immediately notify the RE, or BI as appropriate, if a potential significant discovery emerges.

#### **(2) Significant Paleontological Discovery**

In the event of a significant Paleontological discovery, and when requested by the Paleontologist, the city RE, or BI as appropriate, shall be notified and shall divert, direct, or temporarily halt construction activities in the area of discovery to allow recovery of fossil remains. The determination of significance shall be at the discretion of the qualified Paleontologist. The Paleontologist with Principal Investigator (PI) level evaluation responsibilities shall also immediately notify MMC staff of such finding at the time of discovery. MMC staff will coordinate with appropriate LDR staff.

### **3. Night Work**

#### **a. If night work is included in the contract**

(1) When night work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.

(2) The following procedures shall be followed:

##### **(a) No Discoveries**

In the event that nothing was found during the night work, The PI will record the information on the Site Visit Record Form.

##### **(b) Minor Discoveries**

All Minor Discoveries will be processed and documented using the existing procedures under 2. a., with the exception that the RE will contact MMC by 9 A.M. the following morning.

##### **(c) Potentially Significant Discoveries**

If the PI determines that a potentially significant discovery has been made, the procedures under 2.b., will be followed, with the exception that the RE will contact MMC by 8 A.M. the following morning to report and discuss the findings

- b. If night work becomes necessary during the course of construction
  - (1) The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
  - (2) The RE, or BI, as appropriate, will notify MMC immediately.
  - (3) All other procedures described above will apply, as appropriate.
4. Notification of Completion

The Paleontologist shall notify MMC and the RE, or BI as appropriate, of the end date of monitoring.

#### **Post Construction**

The Paleontologist shall be responsible for preparation of fossils to a point of curation as defined by the City of San Diego Paleontological Guidelines.

1. Submit Letter of Acceptance from Local Qualified Curation Facility.

The Paleontologist shall be responsible for submittal of a letter of acceptance to ERM of LDR from a local qualified curation facility. A copy of this letter shall be forwarded to MMC.
2. If Fossil Collection is not Accepted, Contact LDR for Alternatives

If the fossil collection is not accepted by a local qualified facility for reasons other than inadequate preparation of specimens, the project Paleontologist shall contact LDR, to suggest an alternative disposition of the collection. MMC shall be notified in writing of the situation and resolution.
3. Recording Sites with San Diego Natural History Museum

The Paleontologist shall be responsible for the recordation of any discovered fossil sites at the San Diego Natural History Museum.
4. Final Results Report
  - a. Prior to the release of the grading bond, two copies of the Final Results Report (even if negative), which describes the results, analysis, and conclusions of the above Paleontological Monitoring Program (with appropriate graphics) shall be submitted to MMC for approval by the ERM of LDR.
  - b. MMC shall notify the RE or BI, as appropriate, of receipt of the Final Results Report.

#### **Water Quality**

Prior to the issuance of any grading permit, the City Engineer shall verify that comprehensive permanent post-construction water quality best management practices (BMPs), consistent with those shown on Exhibit "A," are incorporated into the construction drawings to reduce the amount of pollutants (e.g., oil, grease, heavy metals) and sediments discharged from the site, satisfactory to the City Engineer. BMPs shall include the use of a combination of site design, source control, and treatment control

measures as shown on Exhibit "A " and detailed in **"Post-Construction BMP Evaluation - Otay Mesa East, Kimley-Horn & Associates, Inc., April, 2003"** Equivalent alternative available technologies may be approved as BMPs by the City Engineer in lieu of, or in addition to, those shown on Exhibit "A." All permanent BMPs shall be maintained in accordance with the applicable manufacturer specifications. Spot checks may be made by the City Engineer to ensure that BMPs are being properly maintained.

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