

RESOLUTION NUMBER R- 301531

DATE OF FINAL PASSAGE JUN 1 2 2006

WHEREAS, 1858 San Diego Avenue, LLC, submitted an application to the City of San Diego for a site development permit/public right-of-way/tentative map and angle parking for the Vista Diego 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, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented;

WHEREAS, the issue was heard by the City Council on JUN 1 2 2006; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration No. 59986; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that Mitigated Negative Declaration No.59986, 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,

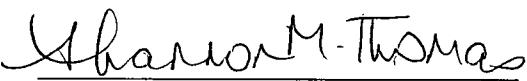
has been reviewed and considered by this Council in connection with the approval of the site development permit/public right-of-way use permit/tentative map and angle parking for Vista Diego project.

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, as Exhibit A, 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: MICHAEL J. AGUIRRE, City Attorney

By 
Shannon M. Thomas
Deputy City Attorney

SMT:als
04/20/06
Or.Dept:DSD
R-2006-903
MMS#3235
ENVIRONMENTAL - MND 11-01-04

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM VISTA DIEGO PROJECT NO. 59986

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. All mitigation measures contained in Mitigated Negative Declaration No. 59986 shall be made conditions of the Site Development Permit, Tentative Map, Public Right-Of-Way Use Permit, and Angle Parking as may be further described below.

NOISE

1. Prior to the issuance of building permits, the applicant shall submit an acoustical analysis to ensure that the building design would provide interior noise levels at or below 45 dBA CNEL.
2. Prior to the issuance of building permits, the applicant shall submit an acoustical analysis to ensure that the materials and design of required exterior acoustical barriers (as shown on Exhibit A) would effectively reduce exterior noise levels to 65 dBA CNEL or lower.

PALEONTOLOGICAL RESOURCES

Prior to Preconstruction 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 Assistant Deputy Director [ADD] of Land Development Review [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 the ADD*

Prior to the recordation of the first final map, NTP, or any permits, including but not limited to, issuance of the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the applicant shall provide a letter of verification to the ADD of LDR stating that a qualified Paleontologist, 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 Preconstruction (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.

Preconstruction Meeting

1. *Monitor Shall Attend Precon Meetings*
 - a. Prior to the 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 Contractors 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*

a. 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.

b. 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 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

- (1) All Minor Discoveries will be processed and documented using the existing procedures under **During Construction** (see Section 2. *Discoveries*, Subsection a.), with the exception that the RE will contact MMC by 9 A.M. the following morning.

(c) Potentially Significant Discoveries

- (1) If the PI determines that a potentially significant discovery has been made, the procedures under **During Construction** (see Section 2. *Discoveries*, Subsection b.), will be followed, with the exception that the RE will contact MMC by 9 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.

c. 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

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

- a. Submit Letter of Acceptance from Local Qualified Curation Facility.

The Paleontologist shall be responsible for submittal of a letter of acceptance to the ADD of LDR from a local qualified curation facility. A copy of this letter shall be forwarded to MMC.

- b. If Fossil Collection is not Accepted, Contact LDR for Alternatives

If the fossil collection is not accepted by a local qualified curation 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.

c. 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

d. Final Results Report

(1) 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 ADD of LDR.

(2) MMC shall notify the RE or BI, as appropriate, of receipt of the Final Results Report.

HISTORICAL RESOURCES (ARCHAEOLOGY)

Prior to Preconstruction (Precon) Meeting

1. Land Development Review [LDR] Plan Check

a. Prior to the issuance of a NTP or any permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the ADD 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 ADD

a. 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 ADD 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. **If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.**

3. Second Letter Containing Names of Monitors has been sent to 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 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
- a. 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, RE, 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
- a. 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
- a. 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
 - a. 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
 - a. 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:

 - b. 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.
- c. Isolate discovery site
- (1) Work will 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 provenience of the remains.
 - (2) The Medical Examiner, in consultation with the PI, shall determine the need for a field examination to determine the provenience.
 - (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.
- d. If Human Remains are determined to be Native American
- (1) The Medical Examiner shall notify the Native American Heritage Commission [NAHC]. By law, **ONLY** the Medical Examiner can make this call.
 - (2) The NAHC will contact the PI within 24 hours or 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 contact information.
 - (4) The PI will coordinate with the MLD for additional coordination.
 - (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 landowner or their authorized representative shall re-enter 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.
- e. 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

- a. 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

- a. The Archaeologist shall be responsible for ensuring that all cultural remains collected are cleaned, catalogued, and permanently curated with an appropriate institution; prior to release of the grading bond, the PI shall submit a letter of acceptance from the curation institution 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 ADD of LDR.
 - b. For significant archaeological resources encountered during monitoring, the Research Design and Data Recovery Program [ADRP] 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
 - a. 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.

JUN 12 2006

Passed by the Council of The City of San Diego on _____, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage **JUN 12 2006**

AUTHENTICATED BY:

(Seal)

JERRY SANDERS

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By *Maurell E. Ketchum*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-301531