

RESOLUTION NUMBER R- 303017

DATE OF FINAL PASSAGE SEP 18 2007

WHEREAS, SD&AE Railroad and M&A Gabae, CLP, Owners/City of San Diego Engineering and Capital Projects Department, Transportation Design Division, Permittee, filed an application with the City of San Diego for a site development permit to construct a 1.8-mile Class I bike path along the Otay River Berm and the Main Street Dike and to relocate an existing haul road utilized by the South Bay Salt Works known as the Bayshore Bikeway project, legally described as portions of Sections 20 and 21, Township 18 South, Range 2 West, San Bernardino Base Meridian, in the Otay Mesa-Nestor Community Plan area, in the IH-2-1, IL-3-1 and OF-1-1 zones; and

WHEREAS, on September 6, 2007, the Planning Commission of the City of San Diego considered Site Development Permit [SDP] No. 3276, and voted to recommend City Council approval of the Permit; 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; and

WHEREAS, the matter was set for public hearing on SEP 18 2007, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Site Development Permit No. 3276:

A. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0504

1. Findings for all Site Development Permits:

a. The proposed development will not affect the applicable land use plan. The Otay Mesa-Nestor Community Plan land use designation for the project area is Open Space. The proposed project is the realignment of a 1.8-mile segment of an existing Class II bike route currently located along the southeastern segment of the Bayshore Bikeway route. The new realignment would be classified as a Class I segment of the bikeway and would be located along the Otay River Berm and Main Street Dike. The project would be located in an existing transportation corridor. A portion of an existing haul road utilized by South Bay Salt Works would be relocated along the Main Street Dike to the Otay River Berm north of the Main Street Dike within the Metropolitan Transit System [MTS] right-of-way. The project would also require the construction of two steel truss bridges on top of two existing wooden railroad bridges that are part of the Coronado Belt Line [CBL], which is a locally-designated historical resource. The proposed steel truss bridges would provide bicycle and pedestrian access across the Otay River and maintain the existing bridge structures in place.

Implementation of the proposed project will not affect the Otay Mesa-Nestor Community Plan or any other applicable land use plans. Development associated with the proposed project (i.e., the construction of a new Class I bike path) is addressed in the Otay Valley Regional Park and Salt Ponds Topics of the Otay Mesa-Nestor Community Plan

b. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed project would realign an existing Class II bike route that follows 13th Street, Palm Avenue, and Saturn Boulevard in the Otay Mesa-Nestor Community Plan area. The proposed project would be a Class I bicycle facility and would provide a completely separated right-of-way for the exclusive use of bicycles and pedestrians, with no cross flow of motorized traffic along the proposed bike path segment. Removing the bike route from the roadways would also encourage more use of the bikeway and provide the opportunity for bikeway users to experience the natural ecological setting of south San Diego Bay. The proposed bike path would be constructed in accordance with applicable City engineering and CalTrans standards to minimize any risk to public health, safety, and welfare.

The proposed project would include removal of the wooden railroad ties. The timber ties are in various states of deterioration, and are expected to continue to deteriorate. If the ties were to be kept in place, compacted material would be placed over the ties, and the bike path would be expected to experience surface pavement deterioration (potholes, cracks, and surface level changes) over time, as the ties would continue to deteriorate and crumble under the bike path surface, creating voids under the bike path users. This situation is considered unsafe and presents significant safety issues for future users of the bike path. Therefore, the bike path as proposed would not be detrimental to public health, safety, and welfare.

c. **The proposed development will comply with the applicable regulations of the Land Development Code.** The proposed bike path will comply with the applicable regulations of the Land Development Code [LDC] except for deviations to impact a special flood hazard area and historical resources.

The CBL is a locally designated historical resource. The CBL is located within the transportation right-of-way and as such has the potential to be impacted by the proposed project. If the bike path were to be moved off of the existing berm (and thus off of the CBL) direct permanent biological impacts (i.e., wetland impacts) would result.

The proposed project has been designed to retain the existing rails and trestle bridges of the CBL. The existing railroad ties are proposed to be removed for health, safety and maintenance. As proposed, the existing train track rails would be covered (capped) with two feet of dirt, and the bike path would be constructed on top of the soil cap. Two pre-fabricated steel truss bridges (the north and south bridges) would be placed over the top of the two existing railroad trestle bridges located within the project corridor. Using this proposed bridge design and construction technique, the existing railroad trestle bridges will remain in their current place and condition, and would not be modified by the proposed project.

The project also involves environmental constraints, which include the presence of environmentally sensitive upland habitat, sensitive species, and wetlands. As such, the proposed project could have a significant environmental effect upon biological resources. However, the project has been designed to avoid and minimize potential impacts to environmentally sensitive lands to the maximum extent practicable. The project will avoid all permanent impacts to wetlands. However, construction of the steel truss bridges would result in minor, temporary disturbance of coastal salt marsh habitat as the result of very limited construction access. The areas of temporarily impacted wetland vegetation are expected to recover naturally. In the event that trampled areas do not return to their pre-project condition, these areas would be planted with a mosaic of the same species impacted by construction, as identified in the Mitigation, Monitoring and Reporting Program [MMRP].

The project will comply with the applicable Multiple Habitat Conservation Program [MSCP] Subarea Plan land use adjacency guidelines to ensure minimal impacts to the Multiple Habitat Plan Area [MHPA]. Furthermore, the Site Development Permit [SDP] prepared for this project includes various conditions and exhibits of approval relevant to achieving compliance with the regulations of the LDC in effect for the project site.

2. Supplemental Findings – Environmentally Sensitive Lands

a. **The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.** The proposed project is located within an existing transportation corridor and the MHPA on land supporting Tier II habitat, including disturbed coastal sage scrub adjacent to wetlands associated with the Otay River and salt ponds of the South Bay Salt Works. The project proposes to construct a new segment of the Bayshore Bikeway on a narrow strip of land composed of the Main Street Dike, Otay River berm, and MTS right-of-way.

A biological resource analysis was conducted that identified vegetation communities and sensitive species occurring along the alignment, within a 300-foot wide alignment corridor including 150 feet on either side of the center line of the proposed alignment. Sensitive habitats in the area include uplands (Diegan coastal sage scrub) and wetlands (coastal salt marsh). Sensitive species in the area include light-footed clapper rail, western snowy plover, California least tern, Belding's Savannah sparrow, and, potentially, salt marsh bird's beak.

The proposed project will result in permanent impacts to approximately 1.353 acres of coastal sage scrub (Tier II upland habitat). Impacts totaling more than 0.1 acre of upland habitat would be considered significant and mitigation would be required. Therefore, in accordance with the City's Biological Guidelines, the impact to coastal sage scrub would require a 1:1 mitigation ratio of in-kind habitat (same habitat type) because mitigation is proposed to occur within the MHPA.

The proposed project will also result in a temporary impact to 725 square feet of coastal salt marsh. This temporary impact will be in the form of trampling of vegetation (the area would not be graded). The areas of temporarily impacted wetland vegetation are expected to recover naturally. In the event that trampled areas do not return to their pre-project condition, these areas would be planted with a mosaic of the same species impacted by construction, as identified in the MMRP.

Two historical resources have been identified within the project corridor: a prehistoric shell midden and a portion of the locally-designated historical CBL. Project construction would be confined to the proposed project right-of-way so as to avoid impacting portions of the shell midden.

The CBL is a locally-designated historical resource. The CBL is located within the transportation right-of-way and as such will be impacted by the proposed project. If the bike path were to be moved off of the existing berm (and thus off of the CBL), direct permanent biological impacts (i.e., wetland impacts) would result.

The proposed project has been designed to retain the existing rails and trestle bridges of the CBL. The existing railroad ties are proposed to be removed for health, safety and maintenance reasons. As proposed, the existing train track rails would be covered (capped) with two feet of dirt, and the bike path would be constructed on top of the soil cap. Two pre-fabricated steel truss bridges (the north and south bridges) would be placed over the top of the two existing railroad trestle bridges located within the project corridor. Using this proposed bridge design and construction technique, the existing railroad trestle bridges will remain in their current place and condition, and would not be modified by the proposed project. Therefore, the proposed project would preserve the features of the CBL in place, to the extent feasible. As proposed, this method would preserve the existing features of the CBL, and preserve the integrity of these features, while allowing construction of the proposed project. In addition, as proposed, the project would avoid all permanent wetland impacts and result in only minor temporary wetland impacts. Therefore, the siting of the proposed improvements will result in minimal disturbance, to the extent feasible, to environmentally sensitive lands.

b. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. The proposed project will be located on existing berms and dikes and would require minimal grading with no significant alteration to the existing topography as the majority of project construction will involve replacement of topsoil over the alignment. Disturbed areas will be revegetated.

The potential geologic hazards are considered to be insignificant. The nearest faults to the proposed project site are buried traces of the Rose Canyon Fault Zone, located approximately one mile north in San Diego Bay, and numerous traces of the La Nacion Fault Zone located approximately three miles to the northeast. In the event of a major earthquake, it is possible that the levees may experience seismic-related ground failure. However, proper engineering of the minor amount of resurfacing of soils during grading activities ensure that no impact would result. Soil liquefaction, lateral spreading, subsidence, collapse, and landslides are considered to be a very low possibility which minimizes the geological hazards to ground shaking from an earthquake.

The proposed project is located within the Otay Valley Watershed. The project does not propose development or activities that would result in an alteration of any hydrologic features or drainages within the Otay Valley Hydrologic Unit. The proposed project would be constructed on the top of a relatively flat berm and dike, and would not affect developed properties located in the floodplain. Implementation of the project will involve minor grading activity to create a smooth, even surface along the berm and dike. This would not involve any change in landforms that would cause an impediment to the flow of floodwaters.

Construction of the two bridges would require erosion/sediment control treatment best management practices [BMP's]. BMP's include, but are not limited to the use of hydroseeding, soil binders, and porous concrete. Following project completion, the bike path would be maintained by the City of San Diego to minimize the potential for significant water quality impacts from the proposed project.

c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. The proposed bike path is the least environmentally damaging practicable alternative. The proposed bike path would be located on existing berms and dikes within the existing MTS right-of-way. The berms are vegetated primarily with ruderal species. Locating the proposed bike path on existing berms and dikes prevents adverse impacts to most adjacent environmentally sensitive lands, including wetlands. The only permanent impact to adjacent environmentally sensitive lands would be approximately 1.353 acres of disturbed coastal sage scrub. Impacts associated with this habitat would be mitigated at a 1:1 ratio as it is proposed to be mitigated within the MHPA. No permanent wetlands impacts would occur as a result of the proposed project.

d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The proposed project lies entirely within the MHPA of the City of San Diego MSCP Subarea Plan. Land within the MHPA has been designated for habitat conservation, and development in these areas is

regulated by the Biology Guidelines for the Environmental Sensitive Lands [ESL] regulations in the City of San Diego Land Development Code (1998).

The proposed project would result in direct, permanent impacts to approximately 1.353 acres of upland vegetation (disturbed coastal sage scrub – Tier II). This habitat is considered an uncommon upland form in the City of San Diego Biology Guidelines. Therefore, mitigation for impacts within the MHPA will be required at a 1:1 ratio as it is proposed to be mitigated within the MHPA.

The ESL regulations identify General Development Regulations for all ESL and Development Regulations for Sensitive Biological Resources. As discussed below, the proposed project would comply with the ESL. Consistency with the ESL and MHPA Land Use Adjacency Guidelines constitutes consistency with the MSCP and MSCP Subarea Plan.

State and federal law precludes adverse impacts to wetlands or listed non-covered species habitat. The applicant shall confer with the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and/or California Department of Fish and Game before any public hearing for the development proposal. The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat. The applicant shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing. Grading or construction permits shall not be issued for any project that adversely impacts Wetlands or listed non-covered species habitat until all necessary federal and state permits have been obtained.

The proposed project is located entirely within the MHPA on land supporting Tier II habitat including disturbed coastal sage scrub adjacent to wetlands associated with the Otay River and salt ponds of the South Bay Salt Works. The project proposes to construct a new segment of the Bayshore Bikeway on a narrow strip of land composed of the Main Street Dike, Otay River berm, and Metropolitan Transit Development Board [MTDB] right-of-way. The proposed alignment is bordered on both sides by a portion of the South San Diego Bay Unit of the National Wildlife Refuge. The U.S. Army Corps of Engineers [ACOE], USFWS, and CDF&G have been consulted and resource agency input has been incorporated into the project as now proposed. The project would involve the construction of two bridges, which would temporarily disturb coastal salt marsh habitat. Construction access would be very limited, and subject to approval of a Special Use Permit [SUP] by the U.S. Fish and Wildlife Service [USFWS] San Diego National Wildlife Refuge Complex. This temporary impact would be mitigated at a 1:1 ratio onsite through restoration of habitat to pre-project conditions, if needed.

Outside and inside the MHPA, impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland. Mitigation for impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

Because all significant impacts associated with wetland habitat would be avoided (or mitigated at a 1:1 ratio for temporary effects) the project would achieve the goal of no-net-

loss of habitat and retain in kind functions and values, as required by Section 143.0141(b) of the ESL regulations.

The City of San Diego and the California Coastal Commission require wetland buffers for projects adjacent to wetlands in order to protect the functions and values of the wetlands. However, in the case of the proposed bike path segment, the provision of a wetland buffer is constrained by the linear nature of the Otay River and associated wetlands and the South Bay Salt Works harvesting operations. Along a portion of the alignment, upland habitat occurs in narrow strips between the railroad track or haul road and wetlands. This upland habitat provides a narrow wetland buffer (approximately 50 feet). Furthermore, where the haul road and railroad tracks are currently elevated, the bike path segment would be elevated above the Otay River and associated wetlands thereby providing a vertical buffer from these habitats.

In addition, Section 143.0130(e) of the City's LDC maintains that public access paths are permitted uses in wetland buffer areas. The proposed bike path segment would be considered a public access path and would therefore be an allowable use in wetland buffer areas, and no significant impact to wetland buffers would result.

Inside the MHPA, development shall avoid impacts to narrow endemic species. Outside the MHPA, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation.

According to the biological resources analysis for the proposed project, no narrow endemic plant species were found during surveys of the proposed segment alignment (Tierra Environmental Services, 2007). Therefore, no significant impact to narrow endemic species would occur.

Inside the MHPA, development is permitted only if necessary to achieve the allowable development area in accordance with the regulations set forth in the OR-1-2 zone, pursuant to Section 131.0250(b) of the LDC, unless exempted from the development area regulations pursuant to Section 143.0111 of the LDC.

The project is not located within the OR zone. According to Section 131.0250(b) of the City's Land Development Code, if a premise is within the OR-1-2 zone and located entirely within the boundary of the MHPA, a maximum of 25 percent of the site may be developed.

Inside and adjacent to the MHPA, all development proposals shall be consistent with the City's MSCP Subarea Plan.

The proposed project is consistent with the City of San Diego MSCP Subarea Plan as the MHPA Land Use Adjacency Guidelines have been incorporated into the MMRP.

Inside the MHPA, any change of an agricultural use to a non-agricultural use is subject to the development area regulations of Section 143.0141(d) of the LDC. Existing agricultural operations that exceed the allowable development area may remain as agricultural use only and do not count as part of the allowable development area.

No portion of the project site contains existing agricultural areas and the proposed project would not result in the conversion of land in agricultural use to a non-agricultural use. Therefore, no significant impact to agricultural land would occur.

All development occurring in sensitive biological resources both inside and outside the MHPA is subject to a site-specific impact analysis conducted by the Assistant Deputy Director of Land Development Review [ADD of LDR], in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following as appropriate to the nature and extent of the impact.

- a) *Acquisition or dedication of another site that can serve to mitigate the project impacts, with limited right of entry for habitat management, as necessary, if the site is not dedicated. This site must have long-term viability and the biological values must be equal to or greater than the impacted site.*
- b) *Preservation or dedication of on-site sensitive biological resources, creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary, if the site is not dedicated. The site must have long-term viability and the biological values must be equal to or greater than the impacted site.*
- c) *In circumstances where the area of impact is small, monetary payment of compensation into a fund in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat areas pursuant to the City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds and acquire or maintain habitat preservation areas.*

Impacts to sensitive biological resources would be fully mitigated onsite. The direct, temporary impact resulting from temporary access needed for construction of the two bridges would be mitigated at a 1:1 ratio, as well as, direct impacts to disturbed coastal sage scrub would be mitigated at 1:1 ratio onsite within the MHPA. Therefore, the proposed project would be consistent with the City of San Diego Biology Guidelines and no significant impact would occur.

Sensitive biological resources located outside the allowable development area would be left in a natural state. Therefore, no significant impact to sensitive biological resources located outside the allowable development area would occur.

Grading during wildlife breeding seasons shall be consistent with the requirements of the MSCP Subarea Plan.

No construction activities would occur during the breeding seasons of sensitive bird species. As identified in the Environmental Impact Report [EIR] Mitigation Measure BR16, construction activities will be restricted to outside the breeding season (October 1 to February 14).

Sensitive biological resources that are outside of the allowable development area on a premises, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into the covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 143.015 of the LDC2. The U.S. Fish and Wildlife Service and the California Department of Fish and Game are to be named as third party beneficiaries to any covenant of easement recorded pursuant to this section.

All mitigation would occur onsite within the City's MHPA which is located within the USFWS San Diego Bay National Wildlife Refuge.

e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The proposed project is located adjacent to the Otay River and San Diego Bay. However, the proposed bike path will be located on existing dikes and berms and will not contribute to the erosion of public beaches or impact local shoreline sand supply. The proposed project will not increase erosional forces in the area, or result in an increase in the rate and amount of flow through the Otay River. In addition, according to the Floodplain Elevations prepared for the proposed project (Kimley-Horn and Associates, Inc., 2006), the project would not affect developed properties located in the floodplain.

f. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. The mitigation for upland vegetation (coastal sage scrub) will be required at a 1:1 ratio and is a condition of the permit. The mitigation is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

3. Supplemental Findings – Environmentally Sensitive Lands Deviations

a. There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands. The proposed bike path alignment is the least environmentally damaging alternative. The proposed project would avoid permanent impacts to wetlands by constructing the bike path within the existing MTS right-of-way (CBL), instead of adjacent to it. Environmentally sensitive lands are located adjacent to the right-of-way. Although this alternative would avoid permanent wetland impacts, it would result in unavoidable impacts to historical resources. Mitigation measures associated with the proposed project would reduce the historical resource impact; however, the impact would still remain significant and unavoidable.

In addition, the proposed project will result in a direct permanent impact to approximately 1.353 acres of coastal sage scrub (Tier II upland habitat). Impacts totaling more than 0.1 acre of upland habitat would be considered significant and mitigation would be required. According to the City's Biological Guidelines, the impact to coastal sage scrub would require a 1:1 mitigation ratio of in-kind habitat (same habitat type) because mitigation is proposed to occur within the MHPA. Mitigation for the coastal sage scrub impact would reduce the biological impact to a level less than significant. Therefore, the proposed project would avoid adverse effects on environmentally sensitive lands although it will result in significant and unavoidable cultural resources impacts.

b. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making. The proposed deviation to impact the CBL is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making. The routing alternatives are limited due to engineering and environmental site constraints. To avoid impacts to the CBL the proposed bike path would have to be constructed adjacent to the belt line. Although this alternative would avoid impacts to the CBL, it would result in permanent impacts to wetlands as environmentally sensitive lands are located adjacent to the belt line, and not permissible because the project is in an existing transportation corridor (MTS right-of-way) and adjacent to the USFWS San Diego Bay National Wildlife Refuge.

4. Supplemental Findings--Environmentally Sensitive Lands Deviation from Federal Emergency Management Agency Regulations

a. The City Engineer has determined that the proposed development, within any designated floodway will not result in an increase in flood levels during the base flood discharge. The proposed project is consistent with the City of San Diego Regulations for Special Flood Hazard Areas. Pursuant to Section 143.0145 of the LDC, the project is consistent with the development regulations as set forth for the OF zone. The proposed project does not involve any new development within the floodplain and, according to the Floodplain Elevations prepared for the proposed project (Kimley-Horn and Associates, Inc., 2006); the project would not affect developed properties located in the floodplain. The project proposes the placement of two steel truss bridges on top of the existing railroad bridges to provide bicycle and pedestrian access across the Otay River and would not result in an increase in flood levels during the base flood discharge.

b. The City Engineer has determined that the deviation would not result in additional threats to public safety, extraordinary public expense, or create a public nuisance. The project proposes the placement of two steel truss bridges on top of the existing two railroad bridges to provide bicycle and pedestrian access across the Otay River which is located in the floodplain. Because the proposed project does not involve any new development within the floodplain, the City Engineer has determined that the deviation, to allow the two steel truss bridges, would not result in additional threats to public safety, extraordinary public expense, or create a public nuisance. Further, the City Engineer has determined that the proposed project is consistent with the City of San Diego regulations for Special Flood Hazard Areas.

5. Supplemental Findings – Historical Resources Deviation for Substantial Alteration of a Designated Historical Resource or Within a Historical District

a. **There are no feasible measures, including a less environmentally damaging alternative, that can further minimize the potential adverse effects on the designated historical resource or historical district.** Pursuant to California Environmental Quality Act [CEQA] Guideline Section 15126.6(a), the EIR analyzed a range of alternatives that could avoid or substantially lessen the significant impacts of the proposed project. The range of alternatives that would completely avoid any alteration to the CBL are severely restricted by the presence of highly sensitive wetland habitats and endangered species, and the USFWS San Diego Bay National Wildlife Refuge, which borders the project on both sides.

The EIR, pages 11-1 through 11-8, describe in detail the constraints within the project area and the rationale as to the preferred alignment. Furthermore, Section 11.0 Alternatives provides an evaluation of five different alternatives to the proposed project, with the primary emphasis of avoiding or reducing the potentially significant impacts of the proposed project associated with the CBL. With the exception of “Alternative C Remove Track/Railroad Bridge Rehabilitation,” each of the alternatives would avoid the impact to the CBL. However, the EIR also identifies that each of these alternatives are not considered feasible.

As identified on EIR page 11-8, that the City did consider, but rejected, an alternative that would retain the wooden ties in place. This alternative would be identical to the proposed project, with the exception that the existing timber railroad ties located within the proposed bikeway corridor, would not be removed (removal of the timber ties is proposed as part of the project). This alternative has been rejected from further consideration because it presents potential maintenance problems. The timber ties are in various states of deterioration, and are expected to continue to deteriorate. The project would place compacted material over the ties, and the bike path would be expected to experience surface pavement deterioration (potholes, cracks, and surface level changes) over time, as the ties continue to deteriorate and crumble under the bike path surface, creating voids under the bike path users. Additionally, as described in the EIR, the alternative is rejected from further consideration because it does not reduce or avoid any significant impact associated with the proposed project, yet it would increase maintenance activity along the corridor. Even under this alternative (retain wooden ties in place), the significant, unavoidable impact identified to the CBL would remain, as the project would visually alter this resource.

Furthermore, retaining the wooden ties (bury in place) is not feasible from a health and safety standpoint. As described above, the timber ties are in various states of deterioration, and are expected to continue to deteriorate. The bike path would be expected to experience surface pavement deterioration (potholes, cracks, and surface level changes) over time, as the ties continue to deteriorate and crumble under the bike path surface, creating voids under the bike path users and an uneven path surface. This situation is considered unsafe and presents safety issues for future users of the bike path.

The condition of the ties, within the City of San Diego, can be distinguished from other adjacent jurisdictions (e.g. Imperial Beach). According to the SANDAG South Bay

Excursion Train Study (1996) which examined the condition of the CBL the following conditions were documented.

The condition of the rail/ties through the Salt Works Ponds:

The track in this stretch is intact except for a couple of rails that have been removed. However, the track section is fouled with medium to dense brush. Rail and tie plate condition ranges from moderate to extreme corrosion. In some places the tie plates are completely rusted through and/or the rail base is severely corroded. The tie condition is poor to very poor where the ties are not too obscured by dirt and brush to see. There are long distances with no competent ties. The track is bedded in sand and dirt. The subgrade consists of sandy soil through a salt marsh.

The condition of the rail/ties through Imperial Beach:

This track section extends along Coronado Bay from approximately 13th Street to a few hundred feet west of the maintenance facility crossing at 10th Street. The track is open and intact except west of 10th street where it is buried in dirt with dense grass growing on it. The rail is 75 pounds rail -- it and the tie plate's exhibit moderate rusting. Tie conditions appears to be better than it is from the Western Salt to 13th Street.....Nevertheless, some of the existing ties could be effective in holding gauge surface and line". Finally, even if the wooden ties were retained in place, the significant, unavoidable impact identified to the CBL would remain as the project would visually alter this resource. The resource will remain buried, and although preserved in place, will still not be visible therefore the significant, unavoidable impact would remain.

Finally, even if the wooden ties were retained in place, the significant, unavoidable impact identified to the CBL would remain as the project would visually alter this resource. The resource will remain buried and although preserved in place, will still not be visible; therefore, the significant, unavoidable impact would remain.

b. The deviation is the minimum necessary to afford relief and accommodate the development and all feasible measures to mitigate for the loss of any portion of the historical resource have been provided by the applicant. The City has worked with Save Our Heritage Organization [SOHO] with the goal of designing the proposed bikeway in a manner that would maintain as much of the locally-designated historic features of the CBL as feasible. To achieve this goal, the project was significantly redesigned in an effort to response to SOHO's input and concerns regarding the proposed project. Specific project features that have been incorporated include: 1) maintaining the existing railroad trestle bridges in their current condition and in a manner that maintains the ability to view the structures from various locations; 2) maintaining the existing steel rails in place; and 3) providing interpretive facilities regarding

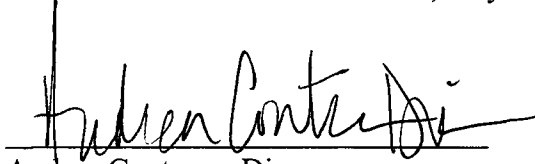
the history of the CBL on the proposed bikeway segment. However, as described above, the timber ties are in various states of deterioration, and are expected to continue to deteriorate. The bike path would be expected to experience surface pavement deterioration (potholes, cracks, and surface level changes) over time, as the ties continue to deteriorate and crumble under the bike path surface, creating voids under the bike path users and an uneven path surface. This situation is considered unsafe and presents significant safety issues for future users of the bike path. Furthermore, additional alternatives are not feasible, as described above.

c. The denial of the proposed development would result in economic hardship to the owner. For purposes of this finding, "economic hardship" means there is no reasonable beneficial use of a property and it is not feasible to derive a reasonable economic return from the property. The project site is confined to an established transportation corridor and the MTS right-of-way. The rail has been inactive for over 50 years and is in a dilapidated condition. The project represents the most reasonable, beneficial use for the existing transportation corridor and would provide a public benefit. There is no alternative, suitable use for the property that would derive a reasonable economic benefit. The project is located within a narrow transportation corridor and is confined on either side by the Refuge and sensitive habitats. Other than the proposed bikeway, there are no other feasible uses for the project site.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Site Development Permit No. 3276 is granted to SD&AE Railroad and M&A Gabae, CLP, Owners/City of San Diego Engineering and Capital Projects Department, Transportation and Design Division, Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Andrea Contreras Dixon
Deputy City Attorney

ACD:pev
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Or.Dept:DSD
R-2007-138
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RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
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JOB ORDER NUMBER 581400

SITE DEVELOPMENT PERMIT NO. 3276
BAYSHORE BIKEWAY [MMRP]
CITY COUNCIL

This Site Development Permit No. 3276 is granted by the City Council of the City of San Diego to SD&AE Railroad and M&A Gabae, CLP, Owners/the Engineering and Capital Projects Department of the City of San Diego, Engineering and Capital Projects Department, Transportation Design Division, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0500. The site is located north along the Otay River Berm and the Main Street Dike in the IH-2-1, IL-3-1 and OF-1-1 zones of the Otay Mesa-Nestor Community Plan area. The project site is legally described as portions of Sections 20 and 21, Township 18 South, Range 2 West, San Bernardino Base Meridian.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owners/Permittee for the construction of an approximately 1.8-mile Class I bike path located along the Otay River Berm and the Main Street Dike and the relocation of an existing haul road utilized by the South Bay Salt Works as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated SEP 18 2007, on file in the Development Services Department.

The project or facility shall include:

- a. A 12-foot wide bike path including an 8-foot wide paved asphalt path with 2-foot wide paved porous concrete shoulders on each side of the bike path;
- b. A chain link fence erected on both sides of the bike path along the entire alignment and an additional one foot of fill material placed on each side of the path, between the proposed porous concrete shoulders and the fence;
- c. Two pre-fabricated steel bridges;
- d. Landscaping (planting, irrigation and landscape related improvements);

- e. A deviation from the Federal Emergency Management Agency Regulations, SDMC section 143.0145(d) to construct two steel truss bridges where structures are not permitted in a special flood hazard area;
- f. A deviation from the Historic Resources Regulations, SDMC section 143.0260, to cap (cover) the existing Coronado Belt Line train tracks rails with 2-feet of dirt; and
- g. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This Permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owners/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Owners/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances,

regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/ Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.

8. The Owner/Permittee shall secure all necessary building permits. The Owner/ Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/ Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de

novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into the permit by reference or authorization for the project.

13. The mitigation measures specified in the MMRP, and outlined in Environmental Impact Report No. 1901 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in Environmental Impact Report No. 1901 satisfactory to the City Manager and the City Engineer. Prior to the issuance of the "Notice to Proceed" with construction, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas: Land Use (MHPA Land Use Adjacency Guidelines), Historical Resources and Biological Resources.

15. Prior to the issuance of any construction permit, the Owners/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

LANDSCAPE REQUIREMENTS:

16. No change, modification, or alteration shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.

17. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for the bike path improvements shall be submitted to the City Manager for approval. Location of proposed vegetation native to the coastal salt marsh environment shall be identified on all construction documents and existing native vegetation shall be preserved during improvement activities, in conformance with Exhibit "A," Landscape Concept Plan.

18. Prior to issuance of any engineering permits for grading, construction documents for revegetation of all disturbed land including irrigation (if applicable) shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager.

19. All required landscape shall be maintained in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

20. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition, or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within thirty days of damage.

PLANNING/DESIGN REQUIREMENTS:

21. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or Citywide sign regulations.

22. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

23. Prior to the issuance of any construction permit, the Permittee shall acquire a pedestrian and non-motor vehicular right-of-way easement and license.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
- This development may be subject to impact fees at the time of construction permit issuance

APPROVED by the City Council of the City of San Diego on SEP 18 2007
by Resolution No. R- 30301.7

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

SD&AE RAILROAD
Owner

By _____

M&A GABAE, CLP
Owner

By _____

**CITY OF SAN DIEGO ENGINEERING
AND CAPITAL PROJECTS
DEPARTMENT, TRANSPORTATION
DESIGN DIVISION**
Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

PERMIT/OTHER – Permit Shell 11-01-04