

(R-2008-279)  
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RESOLUTION NUMBER R- 303333

DATE OF FINAL PASSAGE JAN 15 2008

WHEREAS, Sedlack Development Co., L.P. Owner/Permitee submitted an application to the City of San Diego for a planned development permit/site development permit, tentative map and public right-of-way vacation for the Netta Terrace project [Project]; 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 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 JAN 15 2008; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration LDR No. 2250; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that Mitigated Negative Declaration LDR No. 2250, 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,

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has been reviewed and considered by this Council in connection with the approval of a planned development permit/site development permit, tentative map and public right-of-way vacation for the Netta Terrace 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 Marianne Greene  
Marianne Greene  
Deputy City Attorney

MG:ca  
10/01/2007  
Or.Dept:DSD  
R-2008-279  
MMS#5321

## EXHIBIT A

### MITIGATION MONITORING AND REPORTING PROGRAM

STREET VACATION, PLANNED DEVELOPMENT PERMIT (PDP), AND TENTATIVE MAP (TM)  
Project No. 2250

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 the Mitigated Negative Declaration No. 2250 shall be made conditions of the Site Development Permit and Rezone as may be further described below.

#### **General**

1. Prior to the issuance of a Notice to Proceed (NTP) or any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits the Assistant Deputy Director (ADD) environmental designee of the City's Land Development Review Division (LDR) shall verify that the following statement is shown on the grading and/or construction plans as a note under the heading *Environmental Mitigation Requirements*: "Netta Terrace is subject to Mitigation, Monitoring and Reporting Program (MMRP) and shall conform to the mitigation conditions as contained in the Mitigated Negative Declaration (Project No. 2250)."
2. The owner/permittee shall make arrangements to schedule a pre-construction meeting to ensure implementation of the MMRP. The meeting shall include the Resident Engineer the Qualified Biologist and the City's Mitigation Monitoring Coordination (MMC) Section.

#### **Biological Resources**

Prior to the issuance of a Notice to Proceed (NTP) or any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits the ADD environmental designee of the City's LDR Division shall incorporate the following mitigation measures into the project design and include them on all appropriate construction documents.

##### I. Prior to Permit Issuance

##### A. Land Development Review (LDR) Plan Check

1. Prior to the Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first

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preconstruction meeting, whichever is applicable, direct impacts to 1.08-acres of Non-native grassland (NNGL), Tier IIIB habitat shall be mitigated at a 0.5:1 ratio. The upland impacts shall be mitigated to the satisfaction of the ADD/ Environmental Designee through the following method: Acquisition as described below.

2. Prior to the Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, the applicant shall acquire 0.54-acre of Tier IIIB or habitat within a City approved MHPA Conservation Bank by payment into the City's Habitat Acquisition Fund, the amount necessary to purchase 0.54-acre, (the current per-acre contribution amount for the Habitat Acquisition Fund is \$25,000 per acre and an additional 10 percent administration fee). The 0.54-acre contribution would satisfy the mitigation acreage requirement of 0.5:1 (Tier IIIB) for impacts to 1.08 acres of NNG outside the MHPA that would be mitigated for inside the MHPA.

- B. Prior to the first Preconstruction (Precon) meeting, the owner/permittee shall mitigate for direct impacts to 0.01-acre of Disturbed wetland at a 2:1 ratio through the purchase of 0.02-acre of Mitigation Credits within the Rancho Jamul Mitigation Bank as approved by the City of San Diego and Wildlife Resource Agencies (California Department of Fish and Game, U.S. Fish and Wildlife Service, and Army Corps of Engineers). Verification of purchase shall be provided to the ADD environmental designee of LDR prior to the first Precon.

#### Biological Monitoring Program

Due to potential indirect impacts to sensitive biological resources resulting from project implementation, the following measures shall be incorporated into project construction documents/specifications and implemented accordingly.

1. Prior to Preconstruction Meeting
  - a. Prior to the first pre-construction meeting, the applicant shall provide a letter of verification to the ADD of LDR stating that a qualified Biologist, as defined in the City of San Diego Biological Resource Guidelines has been retained to implement the mitigation measures.
  - b. At least thirty days prior to the Precon Meeting, the EAS approved Biologist shall verify that any special reports, maps, plans and time lines, such as but not limited to, revegetation plans, avian or other wildlife protocol surveys, impact avoidance areas

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described below, or other such information, have been completed and updated. The biologist should identify pertinent information concerning protection of sensitive resources, such as but not limited to, flagging of individual plants or small plant groups, limits of grade fencing and limits of silt fencing (locations may include 10-foot or less inside the limits of grading, or up against and just inside of the limits of the grade fencing).

2. Biological Monitor shall attend Preconstruction Meeting(s)

- a. The qualified Biologist shall attend any grading related Precon Meetings to make comments and/or suggestions concerning the monitoring program with the Construction Manager and/or Grading Contractor
- b. If the Biologist is not able to attend the Precon Meeting, the RE or qualified Biologist, if appropriate, will schedule a focused Precon Meeting for the Biologist, MMC, and 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 or construction on-site (including fencing or geological borings).

3. Identify Areas to be Monitored

At the Precon Meeting, the applicant department designee shall submit to MMC a Biological Monitoring Exhibit (BME) site/grading plan (reduced to 11"x17") that identifies areas to be protected, fenced, and monitored, as well as areas that may require delineation of grading limits.

4. When Monitoring Will Occur

Prior to the commencement of work, the applicant department designee shall also submit a construction schedule to MMC through the RE, as appropriate, indicating when and where monitoring is to begin and shall notify MMC of the start date for monitoring, at a minimum, the qualified biologist should be present when initial grading is occurring in the vicinity of sensitive habitat and for any earthwork in or adjacent to habitat during any potential avian nesting season to ensure conformance with state and federal migratory bird acts.

5. Biological Monitor Shall Be Present During Grading/Excavation

The qualified Biological Monitor shall be on site at a minimum when initial grading is occurring adjacent to coast live oak woodland, disturbed wetland, or potential occupied avian or sensitive species habitat in order to ensure that no take of sensitive species or active bird nests occurs, grading limits are observed, and that orange fencing and silt fencing are installed to protect sensitive areas outside earthwork limits. The qualified biologist shall document activity via the Consultant Site Visit Record. This record

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shall be sent to the RE as appropriate, each month. The RE will forward copies to MMC. The biological monitor shall have the authority to divert work or temporarily stop operations to avoid previously unanticipated significant impacts.

6. During Construction

- a. No staging/storage areas for equipment and materials shall be located within or adjacent to habitat retained in open space area; no equipment maintenance shall be conducted within or near adjacent open space.
- b. Natural drainage patterns shall be maintained as much as possible during construction. Erosion control techniques, including the use of sandbags, hay bales, and/or the installation of sediment traps, shall be used to control erosion and deter drainage during construction activities into the adjacent open space.
- c. No trash, oil, parking or other construction related activities shall be allowed outside the established limits of grading. All construction related debris shall be removed off site to an approved disposal facility.

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 specialty 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 by the applicant department designee to the MMC for approval by the ADD of LDR.
- c. During any construction activity (including earthwork and fence placement) for Project No. 2250 if any previously undisclosed, additional, unforeseen, inadvertent, direct or indirect additional biological resources are impacted (as noted by the applicant, contractors, biological monitor, the Wildlife Agencies, the City, or other entity), they shall be disclosed. Such impacts shall be rehabilitated, revegetated, and/or mitigated per the City's ESL Guidelines and/or as determined by other jurisdictional agencies.

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Such additional measures shall be included as part of the Final Biological Monitoring Report and/or the Final Vernal Pool Mitigation and Management Plan.

Resource Agency Permitting

1. Prior to Commencement

Prior to the commencement of any construction related activities on-site (including earthwork and fencing) the applicant department designee shall provide evidence\* of the following to the ADD environmental designee of LDR prior to any construction activity:

b. Compliance with the Regional Water Quality Control Board Section 401 Water Quality Certification; and

c. Compliance with the California Department of Fish and Game Section 1601 Streambed Alteration Agreement.

\*Evidence shall include either copies of permits issued, letter of resolutions issued by the responsible agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the ADD environmental designee of LDR.

Paleontological Resources

I. Prior to Permit Issuance

1. Land Development Review (LDR) Plan Check

a. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

b. Letters of Qualification have been submitted to ADD

c. Applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.

2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.

3. Prior to the start of work, the applicant shall obtain approval from MMC

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for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

1. Verification of Records Search
  - a. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
  - b. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
2. PI Shall Attend Precon Meetings
  - a. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation 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 PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
3. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
4. When Monitoring Will Occur
  - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
  - b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may

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reduce or increase the potential for resources to be present.

### III. During Construction

1. Monitor Shall be Present During Grading/Excavation/Trenching
  - a. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.**
  - b. The monitor shall document field activity via the Consultant Site Visit Record (CSVr). The CSVr's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
  - c. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.
2. Discovery Notification Process
  - a. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
  - b. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.
4. Determination of Significance
  - a. The PI shall evaluate the significance of the resource.
  - b. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.
  - c. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
  - d. If resource is not significant (e.g., small pieces of broken common

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shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.

- e. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

#### IV. Night Work

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 no discoveries were encountered during night work, The PI shall record the information on the CSVR and submit to MMC via fax by 9am the following morning, if possible.
  - b. Discoveries  
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.
  - c. Potentially Significant Discoveries  
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
  - d. The PI shall immediately contact MMC, or by 8AM the following morning to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
3. If night work becomes necessary during the course of construction
  - a. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
  - b. The RE, or BI, as appropriate, shall notify MMC immediately.
4. All other procedures described above shall apply, as appropriate.

#### V. Post Construction

1. Submittal of Draft Monitoring Report
  - a. The PI shall submit two copies of the Draft Monitoring Report (even if negative) which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,
  - b. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.
  - c. Recording Sites with the San Diego Natural History Museum  
The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered

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during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.

- d. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
  - e. The PI shall submit revised Draft Monitoring Report to MMC for approval.
  - f. MMC shall provide written verification to the PI of the approved report.
  - g. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
2. Handling of Fossil Remains
- a. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
  - b. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate
  - c. Curation of fossil remains: Deed of Gift and Acceptance Verification
  - d. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.
  - e. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
3. Final Monitoring Report(s)
- a. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
  - b. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.