

(R-2008-702)

KEET

336 (A)
3/11

RESOLUTION NUMBER R- 303497

DATE OF FINAL PASSAGE MAR 11 2008

WHEREAS, on April 4, 2007, Pearl & Herschel LLC, Applicant submitted an application to the City of San Diego for a coastal development permit, a vesting tentative map and easement vacation for the Pearl Street Townhomes 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; and

WHEREAS, the issue was heard by the City Council on MAR 11 2008; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration No. 125935; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that Mitigated Negative Declaration No. 125935, 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 a coastal development permit a vesting tentative map and easement vacation for the Pearl Street Townhomes 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:pev:js
02/19/08
Or.Dept:DSD
R-2008-702
MMS #5930

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

Coastal Development Permit, Tentative Map, and Easement Abandonment

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 (Project No.125935) shall be made conditions of Coastal Development Permit, Tentative Map, and Easement Abandonment as may be further described below.

HISTORICAL RESOURCES (ARCHAEOLOGY)

I. Prior to Permit Issuance

A. Land Development Review (LDR) Plan Check

1. 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 Archaeological Monitoring and Native American monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. The 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 archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.
2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the project.

3. Prior to the start of work, the applicant must obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search (1/4 mile radius) has been completed. 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.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
3. The PI may submit a detailed letter to MMC requesting a reduction to the 1/4 mile radius.

B. PI Shall Attend Precon Meetings

1. 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 Archaeologist and Native American Monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. 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.
2. Identify Areas to be Monitored
 - a. Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Exhibit (AME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits.

- b. The AME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).

3. 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 site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor(s) Shall be Present During Grading/Excavation/Trenching

- 1. The Archaeological Monitor shall be present full time during grading/excavation/trenching activities which could result in impacts to archaeological resources as identified on the AME. The Native American monitor shall determine the extent of their presence during construction related activities based on the AME and provide that information to the PI and MMC. The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.
- 2. The monitor shall document field activity via the Consultant Site Visit Record (CSVSR). The CSVSR'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.
- 3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
2. 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.

C. Determination of Significance

1. The PI and Native American monitor shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.
 - a. 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.
 - b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) 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.
 - c. If resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

IV. Discovery of Human Remains

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

A. Notification

1. Archaeological Monitor shall notify the RE or BI as appropriate, MMC, and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS).

2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

B. Isolate discovery site

1. Work shall be directed away 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, will determine the need for a field examination to determine the provenience.
3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.

C. If Human Remains ARE determined to be Native American

1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, ONLY the Medical Examiner can make this call.
2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with the California Public Resource and Health & Safety Codes.
4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.
5. Disposition of Native American Human Remains shall 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 48 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.

- c.** In order to protect these sites, the Landowner shall do one or more of the following:
 - (1)** Record the site with the NAHC;
 - (2)** Record an open space or conservation easement on the site;
 - (3)** Record a document with the County.
- d.** Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to Section 6.c., above.

D. If Human Remains are NOT Native American

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

V. Night and/or Weekend Work

A. If night and/or weekend work is included in the contract

- 1. When night and/or weekend 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 and/or weekend work, the PI shall record the information on the CSVR and submit to MMC via fax by 8AM of the next business day.

b. Discoveries

All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV - Discovery of Human Remains.

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 of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

B. If night and/or weekend 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, shall notify MMC immediately.

C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

A. Preparation and Submittal of Draft Monitoring Report

1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,

- a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.
- b. Recording Sites with State of California Department of Parks and Recreation

The PI 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 Monitoring Report.

2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
4. MMC shall provide written verification to the PI of the approved report.
5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Artifacts

1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued
2. The PI shall be responsible for ensuring 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.
3. The cost for curation is the responsibility of the property owner.

C. Curation of artifacts: Accession Agreement and Acceptance Verification

1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.

2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.

D. Final Monitoring Report(s)

1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
2. The RE shall, in no case, issue the Notice of Completion and/or release of the Performance Bond for grading until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

The environmental mitigation measures listed above shall be shown on the construction plans or referenced under the heading, "Environmental Requirements."

The above mitigation monitoring and reporting program will require additional fees and/or deposits to be collected prior to the issuance of building permits, certificates of occupancy and/or final maps to ensure the successful completion of the monitoring program.