

RESOLUTION NUMBER R- 304659

DATE OF FINAL PASSAGE FEB 17 2009

RESOLUTION CERTIFYING THAT MITIGATED NEGATIVE  
DECLARATION NO. 2118 FOR THE TORREY BROOKE II  
PROJECT WAS COMPLETED IN COMPLIANCE WITH  
CEQA.

WHEREAS, on October 5, 2001, Torrey Brooke Development Inc., Owner/Permittee submitted an application to the City of San Diego for a public right-of-way vacation, tentative map, planned development permit/site development permit and rezone for the Torrey Brooke II Project; and

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

WHEREAS, the issue was heard by the City Council on **FEB 17 2009**; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration [MND] No. 2118/SCH. No. 200821118; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that MND No. 2118/SCH. No. 200821118, 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 MND reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the MND, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of public right-of-way vacation, tentative map, planned development permit/site development permit and rezone for the Torrey Brooke II 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; therefore, MND No. 2118/SCH. No. 200821118, 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.



## EXHIBIT A

### MITIGATION, MONITORING, AND REPORTING PROGRAM:

To ensure that site development would avoid significant environmental impacts, a Mitigation, Monitoring, and Reporting Program (MMRP) is required. Compliance with the mitigation measures shall be the responsibility of the applicant. The mitigation measures are described below.

#### General Measures

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 grading and/or construction plans include an index of sheets shown on the first map sheet which includes "Environmental Requirements" and the following statement "The Torrey Brooke II development project is conditioned to have a qualified biological monitor on-site as determined at the preconstruction meeting. The project shall conform to the Mitigation Monitoring and Reporting Program conditions as contained in the environmental document (LDR No. 42-0188, SCH No. Pending) and as shown verbatim on sheet(s) \_\_\_." Please note, additional related mitigation features and/or notes can also be included on individual map sheets where appropriate (i.e. depicting areas of revegetation)."
2. Prior to issuance of any grading permits, the owner/permittee shall make arrangements to schedule a pre-construction meeting to ensure implementation of the MMRP. The meeting shall include the City Field Resident Engineer (RE), the monitoring biologist, and staff from the City's Mitigation Monitoring and Coordination (MMC) Section.

#### Biological Resources

##### Upland Mitigation

3. The proposed project area includes a total of 2.132 acres. Prior to recordation of the first final map and/or issuance of grading permits (which ever comes first), impacts to 0.362 acres of Diegan coastal sage scrub (located outside the MHPA) shall be mitigated to the satisfaction of the City Manager through off-site preservation of upland habitats in conformance with the City's Environmentally Sensitive Lands Ordinance (ESL) (Option A); or through payment into the City's Habitat Acquisition Fund No. (Option B).
  - Option A: For the off-site preservation option, the owner/permittee shall record a Covenant of Easement, Conservation Easement, or dedication in fee title to the City of San Diego for a total of 0.362 acres inside the MHPA in Tiers I-III, or 0.543 acres of Tier II outside the MHPA.
  - Option B: For the HAF option, the applicant shall pay an estimated total of \$13,937 into the fund (Assumes mitigation within MHPA, at current City rate of \$35,000 per acre + 10 % administration fee (both of which are subject to change), at 0.362 acres, = \$13,937.

### Wetland Mitigation

4. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the Owner/Permittee shall submit a copy of the permit, authorization letter, or other official mode of communication from the resource agencies (i.e., ACOE, USFWS, CDFG, and/or RWQCB) to the ADD of LDR verifying that all necessary federal and state permits have been obtained for the 350 square-foot/approx. 0.008 acre wetlands impacts.

### Preconstruction Measures

5. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of LDR verifying that a qualified biologist has been retained to implement the biological resources mitigation program as detailed below (see A through D):
  - 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 (BRG), has been retained to implement the revegetation plan.
  - B. At least thirty days prior to the pre-construction meeting, a second letter shall be submitted to the MMC section which includes the name and contact information of the Biologist and the names of all persons involved in the Biological Monitoring of the project, if changed and/or not provided in the first letter.
  - C. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall verify that any special reports, maps, plans and time lines, such as but not limited to, revegetation plans, plant relocation requirements and timing, avian or other wildlife (including USFWS protocol) surveys, impact avoidance areas or other such information has been completed and approved by City MMC.
  - D. The qualified biologist (project biologist) shall attend the first preconstruction meeting and perform measures listed under General Birds below (i.e. perform any required pre-grading/construction bird surveys).

### General Birds

6. In order to comply with the Federal Migratory Bird Treaty Act, and CA Department of Fish and Game (CDFG) Code (which essentially prohibits any take of bird species - including disturbance of eggs, fledglings, nests, or plants/ substrate the nest is located in, or causing adults to abandon nests), the project biologist shall verify that no nesting birds are present on any portion of the project site or nearby vicinity (including off-site areas to be impacted) during grading and construction operations that would be disturbed indirectly or directly by the project, especially during the typical bird breeding season between February 1 and September 15. If any breeding birds would be directly

impacted by grading, breeding season work shall be avoided, or the project biologist shall work with EAS and the appropriate wildlife agencies (i.e. US Fish and Wildlife Service and CDFG) to determine appropriate mitigation. If any least Bell's vireo or southwestern willow flycatcher are found to be nesting in the adjacent Drainage A, the following would apply:

AVIAN NOISE MITIGATION for LEAST BELL'S VIREO (State Endangered/Federally Endangered) and SOUTHWESTERN WILLOW FLYCATCHER (Federally Endangered) – PLEASE NOTE, CAGN WOULD NOT BE PROTECTED ON-SITE DUE TO LACK OF MHPA ON OR ADJACENT TO THE SITE

7. Prior to the issuance of any grading permit, the City ADD (or appointed designee) shall verify that the following project requirements regarding the least Bell's vireo and southwestern willow flycatcher are shown on the construction plans:

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MARCH 15 AND SEPTEMBER 15, THE BREEDING SEASON OF THE LEAST BELL'S VIREO; OR BETWEEN MAY 1 AND SEPTEMBER 1, THE BREEDING SEASON OF THE SOUTHWESTERN WILLOW FLYCATCHER (Federally Endangered) UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE CITY ADD:

- A. A QUALIFIED BIOLOGIST (POSSESSING A VALID ENDANGERED SPECIES ACT SECTION 10(a)(1)(A) RECOVERY PERMIT) SHALL SURVEY THOSE WETLAND AREAS THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DECIBELS [dB(A)] HOURLY AVERAGE FOR THE PRESENCE OF THE LEAST BELL'S VIREO AND SOUTHWESTERN WILLOW FLYCATCHER. SURVEYS FOR THE THIS SPECIES SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE WITHIN THE BREEDING SEASON PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. IF THE EITHER BIRD SPECIES IS PRESENT IS PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:

BETWEEN MARCH 15 AND SEPTEMBER 15, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED LEAST BELL'S VIREO HABITAT SHALL BE PERMITTED. BETWEEN MAY 1 AND SEPTEMBER 1, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED SOUTHWESTERN WILLOW FLYCATCHER HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; AND

AND DEPENDING ON THE SPECIES BETWEEN MARCH 15 AND

SEPTEMBER 15 AND/OR BETWEEN MAY 1 AND SEPTEMBER 1, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE LEVELS EXCEEDING 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED LEAST BELL'S VIREO OR SOUTHWESTER WILLOW FLYCATCHER HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE CITY MANAGER AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF ANY OF CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR

AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (e.g., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE LEAST BELL'S VIREO. CONCURRENT WITH THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING\* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 dB(A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (SEPTEMBER 2 AND/OR SEPTEMBER 16).

- \* Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

B. IF LEAST BELL'S VIREO OR SOUTHWESTERN WILLOW FLYCATCHER ARE NOT DETECTED DURING THE PROTOCOL SURVEYS, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE CITY AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MARCH 15 AND SEPTEMBER 15 AND OR MAY 1 AND SEPTEMBER 1 AS FOLLOWS:

I. IF THIS EVIDENCE INDICATES THE POTENTIAL IS



HIGH FOR LEAST BELL'S VIREO AND/OR SOUTHWESTERN WILLOW FLYCATCHER TO BE PRESENT BASED ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED ABOVE.

- II. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THESE SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES WOULD BE NECESSARY.

#### Construction Measures

8. As determined at the Preconstruction Meeting, the project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within onsite, and surrounding sensitive habitat as shown on the approved Exhibit A.
9. All construction activities (including staging areas) shall be restricted to the development area as shown on the approved Exhibit A. The project biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved Exhibit A.

#### Post Construction Measures

10. The following measures are required in order to carry out and ensure the successful revegetation of the graded portions of the Biology Buffer and Zone 2 Brush Management Areas (although these direct impacts will be mitigated of site per ESL ratios – the following 25 month revegetation program is required:
  - A. Final Grading Report and 25 Month Revegetation Program
    1. 25 month Revegetation Establishment/Maintenance Period
      - a. The RMC shall be retained to complete initial grading and maintenance monitoring activities throughout the 25 month monitoring period.
      - b. Maintenance visits will be conducted twice per month for the first six months, once per month for the remainder of the first year, and quarterly thereafter.
      - c. Maintenance activities will include all items described in the LCD.
      - d. Plant replacement will be conducted as recommended by the PQB (note: plants shall be increased in container size relative to the time of initial installation or establishment or maintenance period may be extended to the satisfaction of MMC.
    2. Biological Monitoring
      - a. All biological monitoring and reporting shall be conducted by a PQB or QBM, as appropriate, consistent with the LCD.

- b. Monitoring shall involve both qualitative horticultural monitoring and quantitative monitoring (i.e., performance/success criteria). Horticultural monitoring shall focus on soil conditions (e.g., moisture and fertility), container plant health, seed germination rates, presence of native and non-native (e.g., invasive exotic) species, any significant disease or pest problems, irrigation repair and scheduling, trash removal, illegal trespass, and any erosion problems.
- c. After plant installation is complete, qualitative monitoring surveys will occur monthly during year one and quarterly through the second year.
- d. Upon the completion of the 120-days short-term plant establishment period, quantitative monitoring surveys shall be conducted at 0, 6, 12, and 24 months by the PQB or QBM. All plant material must be able to survive without supplemental irrigation after the first two years.
- e. Quantitative monitoring shall include the use of fixed transects and photo points to determine the vegetative cover within the revegetated habitat. Collection of fixed transect data within the revegetation/restoration site shall result in the calculation of percent cover for each plant species present, percent cover of target vegetation, tree height and diameter at breast height (if applicable) and percent cover of non-native/non invasive vegetation. Container plants will also be counted to determine percent survivorship. The data will be used to determine attainment of performance/success criteria identified within the LCD.
- f. The PQB or QBM shall oversee implementation of post-construction BMP's, such as gravel bags, straw logs, silt fences or equivalent erosion control measure, as needed to ensure prevention of any significant sediment transport. In addition, the PQB/QBM shall be responsible to verify the removal of all temporary post-construction BMP's upon completion of construction activities. Removal of temporary post-construction BMPs shall be verified in writing on the final post-construction phase CSV.

#### C. Submittal of Final Grading Report and Draft Monitoring Report

- 1. A Final Grading Report documenting any additional impact areas or problems during grading; and a draft monitoring letter report shall be prepared to document the completion of the 120-day plant establishment period. The latter report shall include discussion on weed control, horticultural treatments (pruning, mulching, and disease control), erosion control, trash/debris removal, replacement planting/reseeding, site protection/signage, pest management, vandalism, and irrigation maintenance. The revegetation/restoration effort shall be visually assessed at the end of 120 day period to determine mortality of individuals.

2. The PQB shall submit two copies of the Final Grading Report and Draft Monitoring Report which describes the results, analysis, and conclusions of all phases of the Biological Monitoring and Reporting Program (with appropriate graphics) to MMC for review and approval within 30 days following the completion of monitoring. Monitoring reports shall be prepared on an annual basis for a period of five years. Site progress reports shall be prepared by the PQB following each site visit and provided to the owner, RMC and RIC. Site progress reports shall review maintenance activities, qualitative and quantitative (when appropriate) monitoring results including progress of the revegetation relative to the performance/success criteria, and the need for any remedial measures.
3. Draft annual reports (three copies) summarizing the results of each progress report including quantitative monitoring results and photographs taken from permanent viewpoints shall be submitted to MMC for review and approval within 30 days following the completion of monitoring.
4. MMC shall return the Draft Monitoring Report to the PQB for revision or, for preparation of each report.
5. The PQB shall submit revised Monitoring Report to MMC (with a copy to RE) for approval within 30 days.
6. MMC will provide written acceptance of the PQB and RE of the approved report.

#### D. Final Monitoring Reports(s)

11. PQB shall prepare a Final Monitoring upon achievement of the 25-month performance/success criteria and completion.
  - a. The Final Monitoring report shall be submitted to MMC for evaluation of the success of the mitigation effort and final acceptance. A request for a pre-final inspection shall be submitted at this time, MMC will schedule after review of report.
  - b. If at the end of the 25 months any of the revegetated area fails to meet the project's final success standards, the applicant must consult with MMC. This consultation shall take place to determine whether the revegetation effort is acceptable. The applicant understands that failure of any significant portion of the revegetation/restoration area may result in a requirement to replace or renegotiate that portion of the site and/or extend the monitoring and establishment/maintenance period until all success standards are met.

Land Use (MHPA Adjacency) – PLEASE NOTE THESE REQUIREMENTS APPLY TO PROTECT THE DESIGNATED URBAN AMENITY ABUTTING THE SITE TO THE EAST AND DUE TO THE CONNECTIVITY OF “DRAINAGE A” WITH MHPA TO THE SOUTH

Mitigation for Indirect Impacts or Unanticipated Direct Impacts

12. Prior to issuance of grading permits, the City shall verify that the project is in compliance with the MSCP Subarea Plan's Land Use Adjacency Requirements; and that the following site specific requirements are noted on the grading plans under the heading Environmental Requirements:
- A. The qualified biologist (project biologist) shall supervise the placement of orange construction fencing or equivalent along the boundary of the development area as shown on the approved grading plans. The large patch of CA adolphia shown on Figure 4 of the biology report with a light green square with black dot in the middle is to be specifically fenced to exclude it's entirety from the grading area.
  - B. The project biologist shall meet with the owner/permittee or designee and the construction crew to conduct an on-site educational session regarding the need to avoid impacts outside of the approved development area.
  - C. During grading activities, the Best Management Practices for erosion control shall be implemented and monitored as needed to prevent any significant sediment transport. These practices may include but may not be limited to the following: the use of materials such as gravel bags, fiber rolls, sediment fencing, and erosion control matting to stabilize disturbed areas; and installation of erosion control materials, particularly on the downslope side of disturbed areas to prevent soil loss.
  - D. All construction activities shall take place only inside the fenced area. Grading materials shall be stored inside the fenced development area.
  - E. Prior to the release of the grading bond, the project biologist shall submit a letter report to the Environmental Review Manager that assesses any project impacts resulting from construction. In the event that impacts exceed the allowed amounts, the additional impacts shall be mitigated in accordance with the City of San Diego Land Developmental Zoning Code Update Biology Guidelines, to the satisfaction of the City Manager.
  - F. All drainage from development and sheet flow would flow into a new bioswale. Graded slopes would be revegetated per the City's Landscape Manual.
  - G. All lighting associated with the project will be shielded and directed away from the urban/natural edge.
  - H. All plantings at the urban/natural edge shall be native, drought tolerant, and acceptable to the fire marshal. No invasive/non-native species shall be located on-site where they have the potential to invade on-site, or adjacent natural lands. All revegetation within Brush Management Zone 2 and/or the biological buffer must be native chaparral or coastal sage scrub species.
  - I. Appropriate fencing as required by MSCP/Landscaping/Permit or Long Range Planning shall be installed at the rear of the properties to protect open space areas from urban encroachment (people, pets, plants and toxins). Typically, these fences are 2 feet concrete base with open iron bars above to a maximum of 6 feet.