

RESOLUTION NUMBER R- 306138

DATE OF FINAL PASSAGE SEP 14 2010

RESOLUTION CERTIFYING MITIGATED NEGATIVE
DECLARATION NO. 148350 – NATIVITY PREP ACADEMY
PROJECT NO. 148350

WHEREAS, David Rivera, Owner/Permittee, filed an application with the City of San Diego for a Planned Development Permit, Site Development Permit, Conditional Use Permit and Neighborhood Development Permit for the Nativity Prep Academy Project, Project No. 148350; and

WHEREAS, the matter was set for a public hearing to be conducted by the City 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 SEP 14 2010; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration [MND] No. 148350; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is hereby certified that MND No. 148350 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 report 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 the City Council in connection with the approval of the Planned Development Permit, Site Development Permit, Conditional Use Permit and Neighborhood Development Permit for the Nativity Prep Academy 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 MND Mitigation Monitoring and Reporting Program, a copy of which is attached hereto and incorporated by reference, is hereby approved.

BE IT FURTHER RESOLVED that pursuant to California Public Resources Code, Section 21081.6, the City Council hereby 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 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: JAN I. GOLDSMITH, City Attorney

By:



Keith Bauerle
Deputy City Attorney

KB:hm
08/25/10
Or.Dept:DSD
R- 2011-160
PL# 2010-00661

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

Planned Development Permit No. 730154, Site Development Permit No. 523210, Conditional Use Permit No. 523208, Neighborhood Development Permit No. 730122

PROJECT NO. 148350

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 Entitlement Division, 1222 First Avenue, Fifth Floor, San Diego, CA, 92101. All mitigation measures contained in the MND (PTS No. 148350) shall be made conditions of the Planned Development Permit No. 730154, Site Development Permit No. 523210, Conditional Use Permit No. 523208 and Neighborhood Development Permit No. 730122 as may be further described below:

GENERAL

1. Prior to the issuance of a Notice To Proceed (NTP) for a subdivision, or any construction permits, such as Demolition, Grading or Building, or beginning any construction related activity on-site, the Development Services Department (DSD) Director's Environmental Designee (ED) shall review and approve all Construction Documents (CD), (plans, specification, details, etc.) to ensure the MMRP requirements are incorporated into the design.
2. In addition, the ED shall verify that the MMRP Conditions/Notes that apply ONLY to the construction phases of this project are included VERBATIM, under the heading, "**ENVIRONMENTAL/MITIGATION REQUIREMENTS.**"
3. These notes must be shown within the first three (3) sheets of the construction documents in the format specified for engineering construction document templates as shown on the City website:

<http://www.sandiego.gov/development-services/industry/standtemp.shtml>
4. The **TITLE INDEX SHEET** must also show on which pages the "Environmental/Mitigation Requirements" notes are provided.
5. Surety and Cost Recovery – The Development Services Director or City Manager may require appropriate surety instruments or bonds from private Permit Holders to ensure the long term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

GENERAL REQUIREMENTS

Post Plan Check (After permit issuance/Prior to start of construction)

1. **PRE CONSTRUCTION MEETING IS REQUIRED TEN (10) WORKING DAYS PRIOR TO BEGINNING ANY WORK ON THIS PROJECT.** The PERMIT HOLDER/OWNER is responsible to arrange and perform this meeting by contacting the CITY RESIDENT ENGINEER (RE) of the Field Engineering Division and City staff from MITIGATION MONITORING COORDINATION (MMC). Attendees must also include the Permit holder’s Representative(s), Job Site Superintendent and the following consultants:

Paleontologist

Note: Failure of all responsible Permit Holder’s representatives and consultants to attend shall require an additional meeting with all parties present.

Contact Information:

- a) The PRIMARY POINT OF CONTACT is the **RE** at the **Field Engineering Division – 858-627-3200**
- b) For Clarification of ENVIRONMENTAL REQUIREMENTS, it is also required to call **RE and MMC at 858-627-3360**

2. **MMRP COMPLIANCE:**

This Project, Project Tracking System (PTS) 182513, shall conform to the mitigation requirements contained in the associated Environmental Document and implemented to the satisfaction of the DSD’s Environmental Designee (MMC) and the City Engineer (RE). The requirements may not be reduced or changed but may be annotated (i.e. to explain when and how compliance is being met and location of verifying proof, etc.). Additional clarifying information may also be added to other relevant plan sheets and/or specifications as appropriate (i.e., specific locations, times of monitoring, methodology, etc

Note: Permit Holder’s Representatives must alert RE and MMC if there are any discrepancies in the plans or notes, or any changes due to field conditions. All conflicts must be approved by RE and MMC BEFORE the work is performed.

3. **OTHER AGENCY REQUIREMENTS:**

Evidence of compliance with all other agency requirements or permits shall be submitted to the RE and MMC for review and acceptance prior to the beginning of work or within one week of the Permit Holder obtaining documentation of those permits or requirements.

Evidence shall include copies of permits, letters of resolution or other documentation issued by the responsible agency.

Not Applicable for this project.

4. MONITORING EXHIBITS:

All consultants are required to submit, to RE and MMC, a monitoring exhibit on a 11x17 reduction of the appropriate construction plan, such as site plan, grading, landscape, etc., marked to clearly show the specific areas including the **LIMIT OF WORK**, scope of that discipline’s work, and notes indicating when in the construction schedule that work will be performed. When necessary for clarification, a detailed methodology of how the work will be performed shall be included.

NOTE: Surety and Cost Recovery – When deemed necessary by the Development Services Director or City Manager, additional surety instruments or bonds from the private Permit Holder may be required to ensure the long term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

5. OTHER SUBMITTALS AND INSPECTIONS:

The Permit Holder/Owner’s representative shall submit all required documentation, verification letters, and requests for all associated inspections to the RE and MMC for approval per the following schedule:

Document Submittal/Inspection Checklist

<u>Issue Area</u>	<u>Document submittal</u>	<u>Assoc Inspection/Approvals/INote</u>
General	Consultant Qualification Letters	Prior to Pre-construction Meeting
General	Consultant Const. Monitoring Exhibits	Prior to or at the Pre-Construction meeting
Noise	Acoustical Report	Noise mitigation features inspection
Paleontology	Paleontology Reports	Paleontology site observation
Bond Release	Request for Bond Release letter	Final MMRP inspections prior to Bond Release Letter

SPECIFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS

NOISE:

1. Prior to issuance of the building permit, the applicant shall submit building plans which show that how the project would comply with the City Municipal Code regarding noise

and Title 24 of the CA Building Code. The following specific acoustical mitigation measures at a minimum (per the Kasai Consulting, July 22, 2008 Acoustical Report) must be specified on the plans:

- a. Air conditioning or mechanical ventilation
 - b. Double-paned glass
 - c. Solid core doors with weather stripping and seals
 - d. Stucco or brick veneer exterior walls or wood siding with ½ inch thick fiberboard underlayer.
2. Prior to issuance of the Certificate of Occupancy, the applicant/owner shall provide proof of noise compliance via City inspection and “As Built” acoustical report results subject to approval by the City ADD or designee.

PALEONTOLOGICAL RESOURCES

I. Prior to Permit Issuance

A. Entitlements Plan Check

1. Prior to issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits or a Notice to Proceed for Subdivisions, 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

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 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 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 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.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

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 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.
 - 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

Prior to the start of any work that requires monitoring, the PI shall submit a 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).
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 conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor Shall be Present During Grading/Excavation/Trenching

1. 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 such as in the case of a potential safety concern within the area being monitored. In certain circumstances OSHA safety requirements may necessitate modification of the PME.**
2. 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.
3. The monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV'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.

B. Discovery Notification Process

1. 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.
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 shall evaluate the significance of the resource.
 - 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. The determination of significance for fossil discoveries shall be at the discretion of the PI.
 - b. 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.
 - c. If resource is not significant (e.g., small pieces of broken common 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.
 - d. 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 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 CSV and submit to MMC via fax by 8AM on the next business day.

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 on 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 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.

V. 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 Paleontological Guidelines 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,

a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.

b. 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 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.

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 Fossil Remains

1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
2. 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

1. 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.
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 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.
2. 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.