

RESOLUTION NUMBER R- 300757

DATE OF FINAL PASSAGE APR 12 2011

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO CERTIFYING AND APPROVING THAT ENVIRONMENTAL IMPACT REPORT NO. 54384, HAS BEEN COMPLETED IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 (CEQA) AND STATE CEQA GUIDELINES, AND THAT SAID ENVIRONMENTAL IMPACT REPORT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF SAN DIEGO AS LEAD AGENCY STATING FOR THE RECORD THAT THE FINAL ENVIRONMENTAL IMPACT REPORT HAS BEEN REVIEWED AND CONSIDERED PRIOR TO APPROVING THE PROJECT; AND ADOPTING THE MITIGATION, MONITORING, AND REPORTING PROGRAM AS IT RELATES TO THE PACIFIC COAST OFFICE BUILDING PROJECT – PROJECT NO. 54384.

WHEREAS, on November 23, 2006, Robert Pollack, Owner and Applicant, submitted an application to the City of San Diego for a site development permit in connection with the Pacific Coast Office Building Project No. 54384 (Project) with Mitigated Negative Declaration (MND) No. 54384; and

WHEREAS, on April 19, 2006, the Hearing Officer certified MND No. 54384, adopted the Mitigation, Monitoring and Reporting Program and approved Site Development Permit No. 158004 for the Project; and

WHEREAS, on June 15, 2006, the Planning Commission conducted an appeal hearing and affirmed the Hearing Officer's decision; and

WHEREAS, on September 26, 2006, the City Council conducted a hearing on an appeal of the certification of the MND and in accordance with SDMC 112.0520(d)(3) and remanded the project back to the Planning Commission for further analysis and consideration; and

WHEREAS, on May 17, 2007, the Planning Commission again certified MND No. 54384, adopted the Mitigation, Monitoring and Reporting Program and approved Site Development Permit No. 158004 for the Project; and

WHEREAS, on December 4, 2007, the City Council held a hearing of an appeal of the MND and a motion to grant the appeal and deny certification of the MND resulted in a vote of 4-4, which was announced as a de facto approval of the appeal; and

WHEREAS, the applicant filed a Writ of Mandamus in Superior Court, and on April 13, 2009, the Court issued an order finding that “the City Council must, by a majority vote, either: 1) deny the appeal, uphold the environmental determination and adopt the CEQA findings of the previous decision-maker or 2) grant the appeal and make a superseding environmental determination or CEQA finding”; and

WHEREAS, on June 9, 2009, pursuant to the Court’s order, the City Council heard the matter of the environmental appeal of the Planning Commission’s decision to certify former MND No. 54384, and in accordance with SDMC 112.0520(d)(2), granted the appeal and made a superseding environmental determination that the proposed project would require an Environmental Impact Report; and

WHEREAS, an Environmental Impact Report has now been prepared for the Project; and

WHEREAS, implementation of the project with the associated Mitigation Monitoring and Reporting Program (MMRP) would not result in any significant or significant unmitigated impacts, therefore no Findings of Fact or Statement of Overriding Considerations has been developed or is required; 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, the City Council of the City of San Diego considered the issues discussed in Environmental Impact Report (EIR) No. 54384; 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; NOW, THEREFORE,

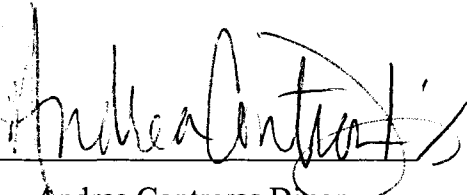
BE IT RESOLVED, by the City Council of the City of San Diego, that it is hereby certified that EIR No. 54384, a copy of which is on file in the Office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administration Code 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 said report, together with any comments received during the public review process, has been reviewed and considered by the City Council; and

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 on file with the Office of the City Clerk; and

BE IT FURTHER RESOLVED, that EIR No. 54384, a copy of which is on file in the Office of the City Clerk, is hereby approved; and

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: 
Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
03/22/11
Or.Dept:DSD
PL#2010-01276

ATTACHMENT: Exhibit A, Mitigation Monitoring and Reporting Program

EXHIBIT A
MITIGATION MONITORING AND REPORTING PROGRAM
PACIFIC COAST OFFICE BUILDING ENVIRONMENTAL MITIGATED NEGATIVE
DECLARATION/SITE DEVELOPMENT PERMIT
Project No. 54384

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.54384) shall be made conditions of Site Development Permit as may be further described below.

GENERAL

Prior to the commencement of the preconstruction meeting, the Assistant Deputy Director of the Land Development Review Division (LDR) shall verify that the following mitigation measures are noted within the construction/grading plans and/or specifications submitted and included in the specifications under the heading *Environmental Mitigation Requirements*.

BIOLOGICAL RESOURCES

1. Prior to issuance of the first grading permit, the owner/permittee shall contribute to the City of San Diego Habitat Acquisition Fund (HAF) to mitigate for the loss of 0.64 acre of Diegan coastal sage scrub (TIER II) and 0.10 acre of non-native grassland (Tier IIIB). The current per-acre contribution amount for the HAF is \$25,000 per acre plus a ten percent administrative fee. This fee is based on mitigation ratios of 1:1 for Diegan coastal sage scrub and 0.5:1 for non-native grassland impacts (both impacts occurred outside the MHPA, yet mitigation would be required inside the MHPA).
2. Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall make arrangement to schedule a preconstruction meeting to ensure implementation of the Mitigation Monitoring and Reporting Program (MMRP). The meeting shall include the Resident Engineer (RE), monitoring biologist, monitoring archaeologist, and staff from the City's Mitigation monitoring Coordination (MMC) Section.
3. 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 mitigation measures.

4. 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, avian or other wildlife protocol surveys, impact avoidance areas or other such information has been completed and updated.
5. The project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within and surrounding sensitive habitats as shown on the approved Exhibit A.
6. 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.

LAND USE/MSCP

1. Prior to initiation of any construction-related grading, the biologist shall discuss the sensitive nature of the adjacent habitat with the crew and subcontractor.
2. Prior to preconstruction meeting, the limits of grading shall be clearly delineated by a survey crew prior to brushing, clearing or grading. The limits of grading shall be defined with appropriate construction fencing and checked by the biological monitor before initiation of construction grading.
3. All lighting adjacent to the MHPA shall be shielded, unidirectional, low pressure sodium illumination (or similar) and directed away from preserve areas using appropriate placement and shields. If lighting adjacent to the MHPA is required for nighttime construction, it shall be unidirectional, low pressure sodium illumination (or similar), and it shall be directed away from the preserve areas and the tops of adjacent trees with potentially nesting raptor species, using appropriate placement and shields.
4. All staging/storage areas for equipment and materials shall be located within the development footprint and shall not encroach onto adjacent sensitive habitat retained within the open space and/or/MHPA areas. No equipment maintenance shall be conducted within or near the adjacent sensitive habitat retained within the open space and/or/MHPA areas
5. 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. Drainage from all development areas adjacent to the MHPA shall be directed away from the MHPA, or if not possible, must not drain directly into the MHPA, but instead into sedimentation basins, grassy swales, and/or mechanical trapping devices as specified by the City Engineer.

6. 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. No invasive non-native plant-species shall be introduced into areas adjacent to the MHPA.
8. Prior to the preconstruction meeting, the ADD of LDR shall verify that the Multi-Habitat Planning Area (MHPA) boundaries and the following project requirements regarding the coastal California gnatcatcher are shown on the construction plans:

COASTAL CALIFORNIA GNATCATCHER (Federally Threatened)

1. Prior to the preconstruction meeting, the City Manager (or appointed designee) shall verify that the Multi-Habitat Planning Area (MHPA) boundaries and the following project requirements regarding the coastal California gnatcatcher are shown on the construction plans:

No clearing, grubbing, grading, or other construction activities shall occur between March 1 and August 15, the breeding season of the Coastal California gnatcatcher, until the following requirements have been met to the satisfaction of the City Manager:

- A. A qualified biologist (possessing a valid Endangered Species Act Section 10(a)(1)(a) Recovery Permit) shall survey those habitat areas within the MHPA that would be subject to construction noise levels exceeding 60 decibels [dB(A)] hourly average for the presence of the Coastal California gnatcatcher. Surveys for the Coastal California gnatcatcher 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 any construction. If gnatcatchers are present, then the following conditions must be met:
 - I. Between March 1 and August 15, no clearing, grubbing, or grading of occupied gnatcatcher habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; and
 - II. Between March 1 and August 15, 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 gnatcatcher 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 construction activities during the

breeding season, areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; or

- III. 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 Coastal California gnatcatcher. 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 (August 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 Coastal California gnatcatchers are not detected during the protocol survey, the qualified biologist shall submit substantial evidence to the city manager and applicable resource agencies which demonstrates whether or not mitigation measures such as noise walls are necessary between March 1 and August 15 as follows:
 - I. If this evidence indicates the potential is high for Coastal California gnatcatcher 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 this species are anticipated, no further mitigation measures are necessary.

RAPTORS

1. If the site has a potential to support nests and nesting raptors are present during construction, compliance with the Migratory Bird Treaty Act/Section 3503 would preclude the potential for direct impacts.
2. If there is a potential for indirect noise impacts to nesting raptors, prior to construction within the development area during the raptor breeding season (February 1 through

September 15) the biologist shall conduct a preconstruction survey to determine the presence of active raptor nests. If active nests are detected, the biologist in consultation with EAS staff shall establish a species appropriate noise buffer zone. No construction shall occur within this zone.

PALEONTOLOGICAL RESOURCES

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 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.

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.

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.**
2. 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.
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 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.

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.

NIGHT WORK

A. If night work is included in the contract

- 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 CSVN 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.

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.

POST CONSTRUCTION

A. Submittal of Draft Monitoring Report

1. 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.
 - 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.

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.