

RESOLUTION NUMBER R- 307234

DATE OF FINAL PASSAGE JAN 10 2012

A RESOLUTION CERTIFYING ENVIRONMENTAL IMPACT REPORT NO. 169653, ADOPTING FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING THE MITIGATION MONITORING AND REPORTING PROGRAM FOR THE OTAY-TIJUANA CROSS BORDER FACILITY (PROJECT NO. 169653).

WHEREAS, on November 25, 2008, Otay-Tijuana Venture, LLC submitted an application to the City of San Diego Development Services Department for a Community Plan Amendment (CPA), Planned Development Permit (PDP), Site Development Permit (SDP), and Vesting Tentative Map including a public right-of-way vacation for the Otay-Tijuana Cross Border Facility Project (Project); 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 issue was heard by the City Council on JAN 10 2012; 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 City Council of the City of San Diego considered the issues discussed in Environmental Impact Report No.169653/SCH. No. 2010121014; NOW THEREFORE,

BE IT RESOLVED, by the City Council that it be, and it is hereby certified, that Environmental Impact Report No. 169653/SCH No.2010121014, in connection with the Project 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 (CEQA Guidelines 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 Project.

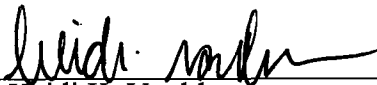
BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the Project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code Section 21081 and CEQA Guidelines Sections 15091 and 15093, the City Council hereby adopts the Candidate Findings of Fact and Statement of Overriding Considerations Regarding Final Environmental Impact Report for the Otay-Tijuana Cross Border Facility Development Project dated November 21, 2011, on file in the Office of the City Clerk as Document No. RR-

307234.

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 Project.

APPROVED: JAN I. GOLDSMITH, City Attorney

By:  _____
Heidi K. Vonblum
Deputy City Attorney

HKV:hm
12/22/2011
01/13/2012 REV.1
Or.Dept:DSD
Document No. 294741

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

Community Plan Amendment No. 355450, Planned Development Permit No. 609801, Site Development Permit No. 896755, Vesting Tentative Map and Street Vacation No. 609579

PROJECT NO. 169653

This Mitigation Monitoring and Reporting Program is designed to insure compliance with public 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 Environmental Impact Report No. 169653/SCH No. 2010121014 shall be made conditions of Community Plan Amendment No. 355450; Planned Development Permit No. 609801, Site Development Permit No. 89675, Vesting Tentative Map and Street Vacation No. 609579 as may be further described below:

15.1 GENERAL REQUIREMENTS:

As Lead Agency for the proposed project under CEQA, the City of San Diego will administer the Mitigation, Monitoring, and Reporting Program (MMRP) for the following environmental issue areas as identified in the Otay-Tijuana Cross Border Facility Development Project EIR: Transportation/Circulation, Noise, Paleontological Resources and Biological Resources. The mitigation measures identified below include all applicable measures from the Otay-Tijuana Cross Border Facility Development Project EIR (Project No. 169653; SCH No. 2010121014). This MMRP shall be made a requirement of project approval.

Section 21081.6 to the State of California Public Resources Code (PRC) requires a Lead or Responsible Agency that approves or carries out a project where an EIR has identified significant environmental effects to adopt a "reporting or monitoring program for adopted or required changes to mitigate or avoid significant environmental effects." The City of San Diego is the Lead Agency for the Otay-Tijuana Cross Border Facility Development Project EIR, and therefore must ensure the enforceability of the MMRP. An EIR has been prepared for this project that addresses potential environmental impacts and, where appropriate, recommends measures to mitigate these impacts. As such, an MMRP is required to ensure that adopted mitigation measures are implemented. Therefore the following general measures are included in this MMRP:

1. Prior to the commencement of work (including related activities such as equipment access or equipment/material staging), a preconstruction meeting shall be conducted and include City of San Diego's Mitigation Monitoring Coordination (MMC) section, Resident Engineer, Building Inspector, Project Biologist, Project Paleontologist, Applicant and other parties of interest.

2. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit and Building Plans/Permits, the Assistant Deputy Director (ADD) Environmental Designee of the City's Land Development Review (LDR) division shall verify that the following statement is shown on the grading and/or construction plans as a note under the heading Environmental Mitigation Requirements: "The Otay-Tijuana Cross Border Facility Development Project is subject to a Mitigation, Monitoring, and Reporting Program and shall conform to the mitigation conditions as contained in Environmental Impact Report No. 169563."
3. Evidence of compliance with other permitting authorities is required, if applicable. Evidence shall include either copies of permits issued, letters of resolution issued by the Responsible Agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the ADD Environmental Designee.

15.2 TRANSPORTATION/CIRCULATION:

Direct Impacts

The owner/permittee shall perform the following intersection and roadway segment improvements to mitigate the project's direct impacts to the community road network to below a level of significance. **If it is determined that required improvements identified in these mitigation measures for Phases 1 and 2 are not feasible, as defined in Section 15364 of the State CEQA Guidelines, significant and unavoidable impacts would occur.** As such, project approval will require adoption of a Statement of Overriding Consideration (SOC).

Phase 1

The owner/permittee shall be fully responsible for all feasible mitigation measures identified for the Phase 1 Plus Proposed Project conditions prior to issuance of first building permits for Phase 1 unless conditioned otherwise in the Planned Development Permit to address timing issues related to right-of-way acquisitions and securing agency permits.

Intersections. The following mitigation measures are required to restore LOS and offset Phase 1 significant direct impacts to intersections:

Tra-1 Britannia Boulevard/Otay Mesa Road: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the construction of an additional northbound right-turn lane at the intersection of Britannia Boulevard/Otay Mesa Road, satisfactory to the City Engineer.

In the event right-of-way for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer."

Tra-2 La Media Road/Airway Road: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the signalization of the intersection of Airway Road/La Media Road, satisfactory to the City Engineer.

Roadway Segments. The owner/permittee shall perform the following mitigation measures to fully mitigate the project's Phase 1 significant direct impacts to roadway segments to below a level of significance.

Tra-3 Siempre Viva Road between Otay Pacific Drive and Britannia Boulevard: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the widening of Siempre Viva Rd on its north side between Otay Pacific Drive and the western project boundary, to provide an interim four-lane major roadway with a raised center median, satisfactory to the City Engineer. The Owner/Permittee may request a Deferred Improvement Agreement for this improvement until issuance of first construction permit for development in excess of 13,683 average daily project trips, in the event biological permits for this improvement cannot be acquired in a timely manner.

Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the widening of the north side of Siempre Viva Road, the restriping of the roadway, and the construction of an interim asphalt median, to provide a four-lane major roadway between the western project boundary and Britannia Boulevard, satisfactory to the City Engineer.

In the event biological permits for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.

Tra-4 Airway Road between Paseo de las Americas and SR-905: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the restriping of Airway Road between Paseo de las Americas and SR-905 to provide a two-lane collector arterial with center two-way left turn lane, satisfactory to the City Engineer.

Tra-5 Britannia Boulevard between SR-905 and Airway Road: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the widening of the east side of Britannia Boulevard to provide an additional northbound through lane, and the re-striping of the western side (southbound approach) to three southbound lanes between Airway Road and SR-905 to provide a six-lane major arterial, satisfactory to the City Engineer.

In the event right-of-way for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in

that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.”

Tra-6 Britannia Boulevard between Airway Road and Siempre Viva Road: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of Britannia Boulevard on both sides between Airway Road and Siempre Viva Road to provide a six-lane major arterial, satisfactory to the City Engineer.

In the event right-of-way for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.”

Tra-7 Otay Pacific Place between Otay Pacific Drive and Las Californias Drive: Prior to issuance of any construction permit for, the Owner/Permittee shall assure by permit and bond the widening of Otay Pacific Place between Otay Pacific Drive and Las Californias Drive to provide a four-lane collector arterial, satisfactory to the City Engineer.

The following mitigation measure partially mitigates the project’s significant Phase 1 direct impact to roadway segments:

Tra-8 Heritage Road-Otay Valley Road between Avenida de las Vistas and Otay Mesa Road: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the widening of Heritage Road-Otay Valley Road from immediately north of Datsun Street to Otay Mesa Road to a two-lane collector with a center two-way left turn lane, satisfactory to the City Engineer.

In the event right-of-way for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.

Phase 2

The owner/permittee shall be fully responsible for all mitigation measures under the Phase 2 Plus Proposed Project conditions prior to issuance of any building permits beyond Phase 1.

Intersections. The owner/permittee shall perform the following mitigation measures to mitigate the project’s Phase 2 significant direct impacts to intersections to below a level of significance.

Tra-9 Caliente Avenue/Otay Mesa Road: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of the east side of Caliente Avenue

to construct an additional northbound exclusive right-turn lane at the intersection of Caliente Avenue/Otay Mesa Road, satisfactory to the City Engineer.

Roadway Segments. The owner/permittee shall perform the following mitigation measures to reduce the project's Phase 2 significant direct traffic impacts to below a level of significance:

- Tra-12** Siempre Viva Road between Britannia Boulevard and Las Californias Drive: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of Siempre Viva Road between Otay Pacific Drive and Las Californias Drive to provide a four lane collector without a two-way left turn lane, satisfactory to the City Engineer.
- Tra-16** Airway Road between Caliente Avenue and Old Otay Mesa Road: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of Airway Road between Caliente Avenue and Old Otay Mesa Road to a four-lane collector arterial, satisfactory to the City Engineer.
- Tra-17** Otay Mesa Road between SR-125 southbound ramp and La Media Road: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of the south side of Otay Mesa Road between SR-125 southbound ramp and La Media Road to provide a six-lane major arterial, satisfactory to the City Engineer.
- Tra-21** Otay Pacific Drive between Siempre Viva Road and Otay Pacific Place: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips,, the Owner/Permittee shall assure by permit and bond the widening of the western side of the roadway and construct a raised center median to provide a four lane major arterial, satisfactory to the City Engineer.

Cumulative Impacts

Buildout

With regard to Mitigation Measures Tra-25 through -48, Tra-51 through 53, Tra-60 through -65, Tra-70 through -72, and Tra-78 through -85, in lieu of payment of the project's full fair share payments, the applicant shall pay a reduced fair share payment in the form of FBA or other applicable development impact fees in effect at the time the applicable building permits are issued.

Roadway Segments

The owner/permittee shall perform the following mitigation measures to fully mitigate the project's contribution to cumulatively significant impacts to roadway segments. Fair share contributions noted below are contained in Table BA of the Traffic Impact Study (Appendix J):

- Tra-66** Otay Pacific Drive between Siempre Viva Road and Otay Pacific Place: Prior to issuance of any construction permit for development in excess of 24,652 average daily trips, the Owner/Permittee shall widen the west side of Otay Pacific Drive, from 250 feet south of the south curblineline of Siempre Viva Road to Otay Pacific Place, as a 4-lane major arterial with 74 feet curb-to-curb within 112 feet of right-of-way and a 14 foot wide raised center median; and, on the west side of the street, new curb, gutter and a minimum five foot wide non-contiguous sidewalk within a 14 foot parkway, satisfactory to the City Engineer.
- Tra-67** Las Californias Drive between Siempre Viva Road and Otay Pacific Place: Prior to issuance of any construction permit for development in excess of 24,652 average daily trips, the Owner/Permittee shall restripe Las Californias Drive between Siempre Viva Road and Otay Pacific Place to provide a two-lane collector with a two-way left turn lane, satisfactory to the City Engineer.
- Tra-68** Otay Pacific Place between Otay Pacific Drive and Las Californias Drive: Prior to issuance of any construction permit for development in excess of 24,652 average daily trips, the Owner/Permittee shall widen Otay Pacific Place, from Otay Pacific Drive to Las Californias Drive, with 70 feet curb-to-curb within 94 feet of right-of-way; and, on the south side of the street, new curb, gutter and a minimum 5 foot wide non-contiguous sidewalk within a 14 foot curb-to-property line distance, satisfactory to the City Engineer.

The following mitigation measure shall be implemented by the project as each lot of the project builds out.

- Tra-86** For each development proposed within the project, the project applicant(s) shall submit to the City a Tracking Table that provides a summary of total ADT generated, AM peak hour in, AM peak hour out, PM peak hour in, and PM peak hour out to allow for a flexible development program while ensuring that the total ADT and peak hour thresholds for the project are not exceeded. Should the buildout of the project result in an excess of any of the above trip thresholds, an amendment to this permit, or further traffic analysis demonstrating that no new significant traffic impacts would result, shall be completed by the applicant(s).

15.3 NOISE:

Implementation of the following mitigation measures would reduce noise impacts from stationary sources on site to below a level of significance:

- Noi-1** All ground-mounted HVAC systems shall utilize a noise control barrier surrounding the equipment; the top of the surrounding wall must be at least two feet higher than the tallest equipment in the enclosure. The barrier would be required to meet the following minimum criteria:

- Sound attenuation barriers shall be a single, solid sound wall constructed of masonry, wood, plastic, fiberglass, steel, or a combination of those materials.
-
- There shall be no cracks or gaps through the wall; any seems or cracks must be filled or caulked.
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- If wood is used, it can be tongue and groove and must be at least one inch thick or have a surface density of at least 3.5pounds per square foot.
-
- Where architectural or aesthetic factors follow, glass or clear plastic may be used in the upper portion.
-
- Sheet metal of 18-gauge (minimum) may be used, if it meets the other criteria and is properly supported and stiffened so that it does not rattle or create noise itself from vibration or wind.
-
- Any doors or gates must be designed with overlapping closures at the bottom and sides and meet the minimum specifications of the wall materials.
-
- Any gate(s) must be of ¾-inch or thicker wood, 18-gauge or thicker solid sheet metal, or an exterior-grade solid-core steel with prefabricated door jams.

Noi-2 All rooftop-mounted HVAC systems shall utilize parapet walls surrounding the equipment; the top of the surrounding walls must be equal to the tallest piece of equipment.

Noi-3 Backup generators shall be enclosed in a standard type two noise control cabinet and protected by a noise control barrier at least two feet higher than the top of the generator. The barrier shall meet the following minimum criteria:

- Sound attenuation barriers shall be a single, solid sound wall constructed of masonry, wood, plastic, fiberglass, steel, or a combination of those materials.
- There shall be no cracks or gaps through the wall; any seems or cracks must be filled or caulked.
- If wood is used, it can be tongue and groove and must be at least one inch thick or have a surface density of at least 3.5pounds per square foot.
- Where architectural or aesthetic factors follow, glass or clear plastic may be used in the upper portion.
- Sheet metal of 18-gauge (minimum) may be used, if it meets the other criteria and is properly supported and stiffened so that it does not rattle or create noise itself from vibration or wind.

- Any doors or gates must be designed with overlapping closures at the bottom and sides and meet the minimum specifications of the wall materials.
- Any gate(s) must be of ¾-inch or thicker wood, 18-gauge or thicker solid sheet metal, or an exterior-grade solid-core steel with prefabricated door jams.

Noi-4 Prior to issuance of building permits for Lots 1, 2, 5, 6, 7, 8, 11, 12, 13, 19, 20, 23, 24, 25, 26, 29, and 30, an exterior-to-interior noise analysis shall be completed to assess off-site noise sources and determine if related interior noise standards are met for on-site commercial uses, assuming the land uses proposed in the CBF plus hotel, commercial and industrial development scenario. Appropriate noise planning and attenuation measures identified in the noise analysis shall be incorporated into the project design to ensure compliance with the General Plan Noise Element Land Use - Noise Compatibility Guidelines.

Noi-5 Prior to issuance of a building permit for Lot 8, an exterior-to-interior noise analysis shall be completed to assess off-site noise sources and determine if related interior noise standards are met for on-site uses within the CBF building, assuming the land uses proposed in the CBF plus industrial development scenario. Appropriate noise planning and attenuation measures identified in the noise analysis shall be incorporated into the project design to ensure compliance with the General Plan Noise Element Land Use - Noise Compatibility Guidelines.

Noi-6 Prior to issuance of building permits for Lots 1, 2, 18, 19, 20, 29, and 30, a noise analysis shall be completed to assess building-specific stationary noise sources and determine if related noise standards are met for on-site exterior use areas, assuming the land uses proposed in the CBF plus hotel, commercial and industrial development scenario. Appropriate noise planning and attenuation measures identified in the noise analysis shall be incorporated into the project design to ensure compliance with the Noise Ordinance noise limits for stationary sources.

15.4 PALEONTOLOGICAL RESOURCES:

Potential impacts to paleontological resources caused by development of the project site would be reduced to below a level of significance through implementation of the following mitigation measure:

Paleo-1 During the phased project development period, grading and excavation activities may potentially affect the moderate-sensitivity Pleistocene terrace deposits within the project site, particularly in association with construction of the Cross Border Facility and the related pedestrian bridge. The excavation process for phased project grading in applicable locations shall be regularly monitored, and the results reported to the City Mitigation MMC by qualified paleontologists, as outlined below.

If, during subsequent development and review of project grading and excavation plans, it is determined by appropriate City and technical personnel that project development in any individual phase would not exceed the noted threshold, the

following mitigation requirements may be reduced or eliminated at the discretion of the City.

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 (Precon) 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. Due to the phased nature of proposed development, each individual project phase may require a focused mitigation program. For each excavation phase, the applicant shall submit a letter of verification to the 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. The 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 for each development phase.
3. Prior to the start of work, the applicant shall obtain approval from the 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 the MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from the 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. For each development phase, and 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 CM and/or Grading Contractor.

- a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with the MMC, 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 for a given phase of site development, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to the 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 for a given phase of site development, the PI shall also submit a construction schedule to the MMC through the RE indicating when and where monitoring will occur.

- b. The PI may submit a detailed letter to the 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 for each project phase as identified on the PME that could result in impacts to formations with moderate resource sensitivity (Pleistocene terrace deposits). **The CM 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 Occupational Safety and Health Administration (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 (CSVR). The CSVRS 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 the 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 the MMC by phone of the discovery, and shall also submit written documentation to the 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 the MMC by phone to discuss significance determination and shall also submit a letter to the 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 the MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
 - c. If the 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 the MMC unless a significant resource is encountered.
 - d. The PI shall submit a letter to the 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
 - b. 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 the MMC via fax by 8 AM on the next business day.
 - c. Discoveries
 - d. All discoveries shall be processed and documented using the existing procedures detailed in Section III - During Construction.
 - e. Potentially Significant Discoveries
 - f. If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
 - g. The PI shall immediately contact the MMC, or by 8 AM 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 the MMC immediately.
 - C. All other procedures described above shall apply, as appropriate.

V. Post Construction

- A. Preparation and Submittal of Draft Monitoring Reports
 - 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative) for each development phase, 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 the 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 Reports.
 - b. Recording Sites with the San Diego Natural History Museum.
 - c. 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. The MMC shall return the Draft Monitoring Reports to the PI for revision or for preparation of the Final Reports.
 3. The PI shall submit revised Draft Monitoring Reports to MMC for approval.
 4. The MMC shall provide written verification to the PI of the approved reports.
 5. The 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 Reports

1. The PI shall submit two copies of the Final Monitoring Reports to the MMC (even if negative), within 90 days after notification from the MMC that the draft reports have been approved.
2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Reports from the MMC which includes the Acceptance Verification from the curation institution.

15.5 BIOLOGICAL RESOURCES

Project Site Mitigation Measures

The following measures shall be implemented by the project applicant to address potential project impacts to burrowing owl.

Bio – 1 To avoid injuring or killing burrowing owl during final on-site grading, a pre-construction survey of the area where evidence of an occupied burrow was observed and where the burrowing owl was observed shall be conducted. The survey shall take place no more than 30 days prior to initiation of clearing and grading (and related activities such as equipment access or equipment/material staging). If necessary, weed removal (by whacking, bush hogging, or mowing) shall be conducted to make all potential burrows in the relevant impact area more easily observed. A qualified biologist shall monitor weed removal to ensure that active burrows are not disturbed during the process. Cameras may be used to determine if a burrow is active or inactive. A letter report shall be submitted to the Mitigation Monitoring Coordinator prior to the pre-construction meeting with the results of the pre-construction survey.

Prior to the issuance of the first grading permit, any impacted individuals must be relocated out of the impact area using passive or active methods approved by the Wildlife Agencies and the City. In accordance with the approved method, a qualified biologist shall implement a relocation process including the collapse of the existing burrowing owl burrow within the project footprint consistent with the approved Exhibit A. At a minimum, the process would include the following:

- If owls are present, a qualified biologist shall implement an eviction process with the use of one-way doors. Once the owls have vacated the burrows (this should take approximately 48 hours after installation of one-way doors), all burrows shall be carefully excavated (to confirm they are empty) and then filled to prevent occupation or reoccupation. A qualified biologist shall carry out the eviction, excavation, and filling.

Bio – 2 Prior to issuance of the first grading permit, the applicant shall provide to the satisfaction of the City (a) two artificial owl burrows (constructed and/or

purchased) in the Otay Mesa area, and (b) a plan outlining a two-year management and monitoring program for the artificial burrow site, unless the management entity already has a management program in place. The burrows may be located on conserved and managed land and shall be within the limits of the City's MSCP Subarea Plan. Possible artificial owl burrow sites include the Otay A/B/C parcels, Robinhood Ridge preserve, Goat Mesa, City Public Utilities land, The Environmental Trust (TET) Otay Mesa sites, or other areas supporting suitable burrowing owl habitat. Use of City lands for an artificial burrow site would require review and approval by the City Department responsible for management of the selected parcel. The applicant shall be responsible for providing funding for maintenance associated with the artificial burrows, should that funding not already be in place.

Bio – 3

To mitigate for potential direct impacts to burrowing owl, the applicant shall contract with a qualified biologist to conduct a pre-construction survey (four visits) within the limits of the project site footprint consistent with the approved Exhibit A. The survey shall take place no more than 30 days prior to initiation of clearing and grading (and related activities such as equipment access or equipment/material staging). If necessary, weed removal (by whacking, bush hogging, or mowing) shall be conducted to make potential burrows within the project footprint consistent with the approved Exhibit A more easily observed. A qualified biologist shall monitor weed removal to ensure that active burrows are not disturbed during the process. Cameras may be used to determine if any observed potential burrows are active or inactive. A letter report shall be submitted to the Mitigation Monitoring Coordinator (MMC) prior to the pre-construction meeting with the results of the preconstruction survey; the MMC shall provide a copy of the preconstruction survey to the Wildlife Agencies for information purposes. If burrowing owls are not detected during the pre-construction survey then no additional mitigation is necessary.

If the survey identifies occupied burrowing owl burrows within the proposed project site footprint, consistent with the approved Exhibit A, then any impacted individuals must be relocated out of the impact area using measures conducted in accordance with Bio-3a or Bio-3b prior to initiation of construction activities (including operations such as such as equipment access or equipment/material staging). The measures to be implemented in the event of positive results (occupied burrows) depend on whether the project activities would occur within, or outside of, the burrowing owl breeding season (February 1 – August 31). If the protocol for relocating impacted owls changes from that described in Bio-3a or Bio-3b, the method for relocating owls shall be approved by the Wildlife Agencies and the City.

Outside of the breeding season

- Bio-3a: If owls are occupying burrows within the project site footprint consistent with the approved Exhibit A and construction activities would

occur outside of the breeding season, a qualified biologist shall implement a burrow eviction process with the use of one-way doors. Once the owls have vacated the burrows (this should take approximately 48 hours after installation of one-way doors) those burrows shall be carefully excavated (to confirm they are empty) and then filled to prevent occupation or reoccupation. A qualified biologist shall carry out the eviction, excavation, and filling. No additional measures would be required.

Within the breeding season

- Bio-3b: If owls are present within the project site footprint consistent with the approved Exhibit A and construction activities would occur between February 1 and August 31 (breeding season), no grading or construction activities shall occur within 300 feet of an active nest within the project site footprint consistent with the approved Exhibit A until the young have fledged. A qualified biologist shall monitor the nest burrow and make the determination as to when the young have fledged. When breeding activities have ended the biologist will implement a burrow eviction process (as described in Bio-3a) to ensure that no owls remain in the nest. When breeding is complete and owls have been cleared from the burrow, construction activities may resume. No additional measures would be required.

Proposed Off-site Traffic Mitigation Measures

The following measures shall be implemented by the project applicant to address secondary biological impacts to off-site sensitive habitats and potential impacts to the burrowing owl.

- Bio-4** Prior to issuance of grading permits for proposed off-site roadway improvements (i.e., in association with Tra-3, Tra-6/23, Tra-12, and Tra-17), related direct impacts to non-native grassland habitat shall be mitigated at the appropriate ratio, depending on whether or not the impacted habitat is occupied by burrowing owls (as identified below in Bio-4a and Bio-4b). This measure shall be implemented through habitat preservation in appropriate areas (upon approval by the Wildlife Agencies), payment into the City's Habitat Acquisition Fund (HAF), purchase of the mitigation credits from the City's Marron Valley Cornerstone Bank, payment into an established grassland or dedicated endowment fund, or contribution to an established owl/grassland enhancement effort, as determined in the City of San Diego Biology Guidelines and MSCP Subarea Plan, to the satisfaction of the Development Services Director or Environmental Designee.

Non-Occupied Non-Native Grassland Habitat

- Bio-4a: Direct impacts to non-native grassland habitat determined not to be occupied by burrowing owl shall be mitigated at a 0.5:1 ratio in accordance with the City Biology Guidelines.

Occupied Non-Native Grassland Habitat

- Bio-4b: Direct impacts to non-native grassland habitat determined to be occupied by burrowing owl shall be mitigated at a 1:1 ratio in accordance with the City Biology Guidelines. This mitigation requirement shall be met through preservation or habitat restoration/enhancement (e.g., placement of artificial burrows) of owl-occupied habitat or contribution to an owl restoration effort in the Otay Mesa vicinity. All areas preserved as mitigation for occupied non-native grassland shall either support burrowing owls, or shall implement an associated restoration plan to provide suitable burrowing owl habitat (with prior approval of the restoration plan by the City and Wildlife Agencies).

Bio-5 Prior to issuance of grading permits for proposed off-site roadway improvements a pre-construction survey for burrowing owl shall be conducted within suitable habitat in the proposed improvement areas pursuant to the scope and methodology described above under Bio-3.

Bio-6 Prior to issuance of grading permits for proposed individual off-site roadway improvements (i.e., in association with Tra-3), related direct impacts to wetland habitats shall be mitigated by obtaining approved Wildlife Agency permits, and implementing associated habitat creation, restoration, and/or purchase of mitigation credits in an approved bank (e.g., Rancho Jamul) at appropriate ratios, and per approval by the Wildlife Agencies. Specifically, direct impacts to freshwater marsh, southern willow scrub and disturbed wetland habitats shall be mitigated at a 2:1 ratio or other applicable ratio[s] as directed by the Wildlife Agencies issuing the applicable permits).

Bio-7 Prior to issuance of grading permits for proposed off-site roadway improvements adjacent to sensitive habitat, the entire limits of grading shall be delineated with orange construction fencing (or other appropriate barrier) under the supervision of a qualified biologist to preclude entry into adjacent sensitive habitats. The need to install fencing shall be noted on the project construction drawings.

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.