

RESOLUTION NUMBER R- 310940

DATE OF FINAL PASSAGE FEB 07 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING ADDENDUM NO. 371807 TO ENVIRONMENTAL IMPACT REPORT (EIR) NO. 30330/304302, AND ADOPTING THE MITIGATION, MONITORING, AND REPORTING PROGRAM FOR THE SOUTHVIEW EAST PROJECT – PROJECT NO. 371807.

WHEREAS, Southview Development Partners, L.P. submitted an application to the Development Services Department for a rezone, a Tentative Map, a Site Development Permit, and a Planned Development Permit for the Southview East project (Project); and

WHEREAS, on March 25, 2014, the City Council adopted Resolution No. 308809 certifying Environmental Impact Report No. 30330/304032, SCH NO. 2004651076, a copy of which is on file in the Office of the City Clerk, in accordance with the California Environmental Quality Act of 1970 (CEQA) (Public Resources Code Section 21000 et seq.), as amended, and the State CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.); and

WHEREAS, State CEQA Guidelines section 15164(a) allows a lead agency to prepare an Addendum to a final Environmental Impact Report, if such Addendum meets the requirements of CEQA; 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, a public hearing is required by law implicating due process rights of individuals affected by the decision, and the Council is 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 as follows:

1. That the information contained in the final Environmental Impact Report No. 30330/304032, SCH No. 2004651076 along with the Addendum thereto (Addendum No. 371807), including any comments received during the public review process, has been reviewed and considered by this City Council prior to making a decision on the Project.

2. That there are no substantial changes proposed through the consideration of the Project and no substantial changes with respect to the circumstances that would require major revisions in the Environmental Impact Report.

3. That no new information of substantial importance has become available showing that the Project would have any significant effects not discussed previously in the Environmental Impact Report or that any significant effects previously examined will be substantially more severe than shown in the Environmental Impact Report.

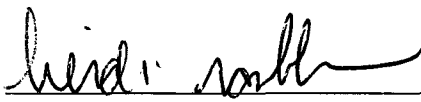
4. That no new information of substantial importance has become available showing that mitigation measures or alternatives previously found not to be feasible are in fact feasible which would substantially reduce any significant effects, but that the Project proponents decline to adopt, or that there are any considerably different mitigation measures or alternatives not previously considered which would substantially reduce any significant effects, but that the Project proponents decline to adopt.

5. That pursuant to State CEQA Guidelines Section 15164, none of the conditions of described in State CEQA Guidelines section 15162 have occurred or only minor technical changes or additions are necessary, and therefore, the City Council adopts Addendum to Environmental Impact Report No. 371807 with respect to the Project, a copy of which is on file in the Office of the City Clerk as Document No. RR-310940.

6. That pursuant to CEQA Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this City Council in order to mitigate or avoid significant effects on the environment, which is attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project after final passage of O- 20796 approving Rezone No. 1299346.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Heidi K. Vonblum
Deputy City Attorney

HKV:nja
01/20/17
Or.Dept: DSD
Doc. No. 1426318

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

The Southview East Project shall be required to comply with all mitigation measures outlined within the Mitigation, Monitoring and Reporting Program of the previously certified OMCP FEIR No. 30330/304032, SCH No. 2004651076 and the Project-specific subsequent technical studies required in accordance with the OMCP FEIR Mitigation Framework. The following MMRP identifies measures which specifically apply to this Project.

A. GENERAL REQUIREMENTS – PART I Plan Check Phase (prior to permit issuance)

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.

B. GENERAL REQUIREMENTS – PART II 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:

Qualified Biologist
Qualified Archaeologist
Native American Monitor

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, applicant t is also required to call **RE and MMC at 858-627-3360**
2. **MMRP COMPLIANCE:** This Project, Project Tracking System (PTS) Number 371807 and /or Environmental Document Number 371807, 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

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

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

C. SPECIFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS

Land Use

Mitigation for Indirect Impacts Associated with MHPA Land Use Adjacency:

Mitigation Measure LU-2 from the OMCP FEIR requires that Projects adjacent to the MHPA comply with the Land Use Adjacency Guidelines of the MSCP. Therefore, to mitigate for significant edge effect impacts due to grading/land development, drainage, toxics, lighting, public access, invasive plant species, and noise, the following measures shall be required. While these measures are meant to protect the MHPA, they are also required to address potential indirect impacts to vernal pools and road pools that support fairy shrimp and nesting raptors (potentially northern harrier and burrowing owl) in the MHPA.

Mitigation for impacts to drainage and toxics, lighting, noise, invasive plant species, grading/land development, and raptor nesting impacts is required for construction of the Southview East subdivision.

I. Prior to issuance of any construction permit or notice to proceed, Development Services Department /Land Development Review, and/or MSCP staff shall verify the applicant has accurately represented the Project's design in or on the Construction Documents (CDs/CDs consist of Construction Plan Sets for Private Projects and Contract Specifications for Public Projects) are in conformance with the associated discretionary permit conditions and Exhibit "A," and also the City's MSCP MHPA Land Use Adjacency Guidelines. The applicant shall provide an implementing plan and include references on/in CDs of the following:

A. **Grading/Land Development/MHPA Boundaries:** MHPA boundaries on site and adjacent properties shall be delineated on the CDs. DSD Planning and/or MSCP staff shall ensure that all grading is included within the development footprint, specifically manufactured slopes, disturbance, and development within or adjacent to the MHPA. For Projects within or adjacent to the MHPA, all manufactured slopes associated with site development shall be included within the development footprint.

B. **Drainage:** The use of structural and non-structural Best Management Practices, Best Available Technology, and use of sediment catchment devices downstream of paving activities shall be used to reduce potential impacts associated with construction. The Project design shall comply with the Standard Urban Stormwater Management Plan and Municipal Stormwater Permit criteria of the State Water Resources Control Board and City.

Natural drainage patterns shall be maintained as much as possible during construction. Erosion control techniques, including the use of sandbags, hay bales, and/or installation of sediment traps, shall be used to control erosion and deter drainage during construction activities into the MHPA, vernal pools, and road pools.

C. **Toxics/Project Staging Areas/Equipment Storage:** No trash, oil, parking, or other construction/development-related material/activities shall be allowed outside any approved construction limits. Provide a note in/on the CDs that states: "*All construction related activity that may have potential for leakage or intrusion shall be monitored by the Qualified Biologist/Owners Representative or Resident Engineer to ensure there is no impact to the MHPA.*"

No staging/storage areas for equipment and materials shall be located within or adjacent to the MHPA, vernal pools, or road pools.

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.

D. **Lighting:** Lighting within or adjacent to the MHPA shall be directed away/shielded and be subject to City Outdoor Lighting Regulations per LDC Section 142.0740.

E. **Invasive Plant Species:** No invasive, non-native plant species shall be introduced to the site during construction (e.g., on the undercarriages of vehicles). Vehicles and equipment brought to the site shall be washed at an appropriate offsite location/facility prior to entering the site.

F. **Noise:** Due to the site's location adjacent to or within the MHPA where the Qualified Biologist has identified potential nesting habitat for listed avian species, construction noise that exceeds the maximum levels allowed shall be avoided during the breeding seasons for the coastal California Gnatcatcher (March 1 through August 15). If construction is proposed during the breeding season for the species, USFWS protocol surveys shall be required in order to determine species presence/absence. If protocol surveys are not conducted in suitable habitat during the breeding season for the aforementioned listed species, presence shall be assumed with implementation of noise attenuation and biological monitoring. When applicable (i.e., habitat is occupied or if presence of the Covered Species is assumed), adequate noise reduction measures shall be incorporated as follows:

COASTAL CALIFORNIA GNATCATCHER (Federally Threatened) Prior to the issuance of any grading permit the City Manager (or appointed designee) shall verify that the 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 within 500 feet of the MHPA between March 1 and August 15 (gnatcatcher breeding season) until the following requirements have been met to the satisfaction of the City Manager:

- A. A qualified biologist (possessing a valid FESA Section 10(a)(1)(A) Recovery Permit) shall survey appropriate habitat (coastal sage scrub) areas within the MHPA that lie within 500 feet of the Project footprint and would be subject to construction noise levels exceeding 60 dB hourly average for the presence of the gnatcatcher. If no appropriate habitat is present then the surveys will not be required. If appropriate habitat is present, gnatcatcher surveys shall be conducted pursuant to USFWS protocol survey guidelines within the breeding season prior to commencement of any construction. If gnatcatchers are present within the MHPA, 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 within the MHPA. 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 hourly average at the edge of occupied gnatcatcher habitat within the MHPA. An analysis showing that noise generated by construction activities would not exceed 60 dB 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 commencement of construction activities during the breeding season, areas restricted from such activities shall be staked or fenced under supervision of a qualified biologist; or
 - III. At least two weeks prior to commencement of construction activities and under 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 hourly average at the edge of habitat

(within the MHPA) occupied by the gnatcatcher. Concurrent with commencement of construction activities and construction of necessary noise attenuation facilities, noise monitoring* shall be conducted at the edge of occupied habitat area within the MHPA to ensure that noise levels do not exceed 60 dB 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 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 within the MHPA are maintained below 60 dB hourly average or to the ambient noise level if it already exceeds 60 dB hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels within occupied MHPA habitat to below 60 dB hourly average or to the ambient noise level if it already exceeds 60 dB 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 gnatcatchers are not detected within the MHPA during the protocol survey, the qualified biologist shall submit substantial evidence to the City Manager and applicable wildlife agencies which demonstrates whether or not mitigation measures such as noise walls are necessary between March 1 and August 15 as follows:
 - I. If evidence indicates high potential for gnatcatcher presence based on historical records or site conditions, Condition A.III shall be adhered to as specified above.
 - II. If evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

Historical Resources (Cultural Resources/Archaeology)

In order to avoid potential historical resources impacts due to grading activities, the following mitigation measures shall be implemented by the Project applicant:

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 Archaeological Monitoring and Native American

monitoring have been noted on the applicable construction documents through the plan check process.

- B. Letters of Qualification have been submitted to ADD
 - 1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the Project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.
 - 2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the Project meet the qualifications established in the HRG.
 - 3. Prior to the start of work, the applicant must obtain written approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

- A. Verification of Records Search
 - 1. The PI shall provide verification to MMC that a site specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coastal Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
 - 2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
 - 3. The PI may submit a detailed letter to MMC requesting a reduction to the ¼ mile radius.
- B. PI Shall Attend Precon Meetings
 - 1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Native American consultant/monitor (where Native American resources may be impacted), Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American Monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological

Monitoring program with the Construction Manager and/or Grading Contractor.

- a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored
 - a. Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Exhibit (AME) (with verification that the AME has been reviewed and approved by the Native American consultant/monitor when Native American resources may be impacted) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits.
 - b. The AME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
3. When Monitoring Will Occur
 - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
 - b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate site conditions such as depth of excavation and/or site graded to bedrock, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

- A. Monitor(s) Shall be Present During Grading/Excavation/Trenching
 1. The Archaeological Monitor shall be present full-time during all soil disturbing and grading/excavation/trenching activities which could result in impacts to archaeological resources as identified on the AME. **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 AME.**

2. The Native American consultant/monitor shall determine the extent of their presence during soil disturbing and grading/excavation/trenching activities based on the AME and provide that information to the PI and MMC. If prehistoric resources are encountered during the Native American consultant/monitor's absence, work shall stop and the Discovery Notification Process detailed in Section III.B-C and IV.A-D shall commence.
 3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered that may reduce or increase the potential for resources to be present.
 4. The archaeological and Native American consultant/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 Archaeological Monitor shall direct the contractor to temporarily divert all soil disturbing activities, including but not limited to digging, trenching, excavating or grading activities in the area of discovery and in the area reasonably suspected to overlay adjacent resources 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.
 4. No soil shall be exported off-site until a determination can be made regarding the significance of the resource specifically if Native American resources are encountered.
- C. Determination of Significance
1. The PI and Native American consultant/monitor, where Native American resources are discovered shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.

- a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.
- b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) which has been reviewed by the Native American consultant/monitor, 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. **Note: If a unique archaeological site is also an historical resource as defined in CEQA, then the limits on the amount(s) that a project applicant may be required to pay to cover mitigation costs as indicated in CEQA Section 21083.2 shall not apply.**
- c. If the resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

IV. Discovery of Human Remains

If human remains are discovered, work shall halt in that area and no soil shall be exported off-site until a determination can be made regarding the provenance of the human remains; and the following procedures as set forth in CEQA Section 15064.5(e), the California Public Resources Code (Sec. 5097.98) and State Health and Safety Code (Sec. 7050.5) shall be undertaken:

A. Notification

1. Archaeological Monitor shall notify the RE or BI as appropriate, MMC, and the PI, if the Monitor is not qualified as a PI. MMC will notify the appropriate Senior Planner in the Environmental Analysis Section (EAS) of the Development Services Department to assist with the discovery notification process.
2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

B. Isolate discovery site

1. Work shall be directed away from the location of the discovery and any nearby area reasonably suspected to overlay adjacent human remains until a determination can be made by the Medical Examiner in consultation with the PI concerning the provenance of the remains.
2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenance.

3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.
- C. If Human Remains **ARE** determined to be Native American
1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, **ONLY** the Medical Examiner can make this call.
 2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.
 3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with CEQA Section 15064.5(e), the California Public Resources and Health & Safety Codes.
 4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.
 5. Disposition of Native American Human Remains will be determined between the MLD and the PI, and, if:
 - a. The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR;
 - b. The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner, THEN,
 - c. In order to protect these sites, the Landowner shall do one or more of the following:
 - (1) Record the site with the NAHC;
 - (2) Record an open space or conservation easement on the site;
 - (3) Record a document with the County.
 - d. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and items associated and buried with Native

American human remains shall be reinterred with appropriate dignity, pursuant to Section 5.c., above.

- D. If Human Remains are **NOT** Native American
1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial.
 2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98).
 3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the San Diego Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with MMC, EAS, the applicant/landowner, any known descendant group, and the San Diego Museum of Man.

V. Night and/or Weekend Work

- A. If night and/or weekend work is included in the contract
1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.
 2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSVR and submit to MMC via fax by 8AM of the next business day.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV - Discovery of Human Remains. Discovery of human remains shall always be treated as a significant discovery.
 - c. Potentially Significant Discoveries
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction and IV-Discovery of Human Remains shall be followed.
 - d. The PI shall immediately contact MMC, or by 8AM of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night and/or weekend work becomes necessary during the course of construction

1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

A. Preparation and Submittal of Draft Monitoring Report

1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring. **It should be noted that if the PI is unable to submit the Draft Monitoring Report within the allotted 90-day timeframe resulting from delays with analysis, special study results or other complex issues, a schedule shall be submitted to MMC establishing agreed due dates and the provision for submittal of monthly status reports until this measure can be met.**
 - a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with State of California Department of Parks and Recreation.
The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.
2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
4. MMC shall provide written verification to the PI of the approved report.
5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

- B. Handling of Artifacts
 - 1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued.
 - 2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.
 - 3. The cost for curation is the responsibility of the property owner.
- C. Curation of artifacts: Accession Agreement and Acceptance Verification
 - 1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this Project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.
 - 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
 - 3. When applicable to the situation, the PI shall include written verification from the Native American consultant/monitor indicating that Native American resources were treated in accordance with state law and/or applicable agreements. If the resources were reinterred, verification shall be provided to show what protective measures were taken to ensure no further disturbance occurs in accordance with Section IV – Discovery of Human Remains, Subsection 5.
- D. Final Monitoring Report(s)
 - 1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
 - 2. The RE shall, in no case, issue the Notice of Completion and/or release of the Performance Bond for grading until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

Biological Resources

In order to avoid potential direct and indirect biological resources impacts, the following mitigation measures shall be implemented by the Project applicant:

General Mitigation Measures

I. Prior to Construction

A. **Biologist Verification:** The owner/permittee shall provide a letter to the City's Mitigation Monitoring Coordination (MMC) Section stating that a Project Biologist (Qualified Biologist), as defined in the City of San Diego's Biological Guidelines (2012), has been retained to implement the Project's biological monitoring program. The letter shall include the names and contact information of all persons involved in the biological monitoring of the Project.

B. **Pre-construction Meeting:** The Qualified Biologist shall attend a preconstruction meeting, discuss the Project's biological monitoring program, and arrange to perform any follow up mitigation measures and reporting including site-specific monitoring, restoration or revegetation, and additional fauna/flora surveys/salvage.

C. **Biological Documents:** The Qualified Biologist shall submit all required documentation to MMC verifying that any special mitigation reports including but not limited to, maps, plans, surveys, survey timelines, or buffers are completed or scheduled per City Biology Guidelines, MSCP, ESL Ordinance, Project permit conditions; CEQA; endangered species acts; and/or other local, State or Federal requirements.

D. **Biological Construction Mitigation/Monitoring Exhibit:** The Qualified Biologist shall present a Biological Construction Mitigation/Monitoring Exhibit which includes the biological documents in C, above. In addition, include: restoration/revegetation plans, plant salvage/relocation requirements, (e.g. coastal cactus wren, plant salvage, burrowing owls exclusions, etc.) avian or other wildlife surveys/survey schedules (including general avian nesting and USFWS protocol), timing of surveys, wetland buffers, avian construction avoidance areas/noise buffers/ barriers, other impact avoidance areas, and any subsequent requirements determined by the Qualified Biologist and the City Assistant Deputy Director/MMC. The Biological Construction Mitigation/Monitoring Exhibit shall include a site plan, written and graphic depiction of the Project's biological mitigation/monitoring program, and a schedule. The Biological Construction Mitigation/Monitoring Exhibit shall be approved by MMC and referenced in the construction documents.

E. Avian Protection Requirements: To avoid any direct impacts to raptors and/or any native/migratory birds, removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to September 15). If removal of habitat in the proposed area of disturbance must occur (based on construction timing) during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction survey shall be conducted within 10 calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results of the pre-construction survey to City Development Services Department for review and approval prior to initiating any construction activities. If nesting birds are detected, a letter report or mitigation plan in conformance with the City's Biology Guidelines and applicable State and Federal law (i.e., appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities is avoided. The report or mitigation plan shall be submitted to the City Development Services Department for review and approval and implemented to the satisfaction of the City. The City's MMC Section or Resident Engineer, and Qualified Biologist shall verify and approve that all measures identified in the report or mitigation plan are in place prior to and/or during construction. If nesting birds are not detected during the preconstruction survey, no further mitigation is required.

F. Resource Delineation: Prior to construction activities, the Qualified Biologist shall supervise the placement of silt and orange construction fencing or equivalent along the limits of disturbance and verify compliance with any other Project conditions as shown on the Biological Construction Mitigation/Monitoring Exhibit. This phase shall include, as applicable, flagging plant specimens and delimiting buffers to protect sensitive biological resources (e.g., habitats/flora and fauna species, including nesting birds) during construction. Appropriate steps/care should be taken to minimize attraction of nest predators to the site.

G. Education: Prior to commencement of construction activities, the Qualified Biologist shall meet with the owner/permittee or designee and the construction crew and conduct an on-site educational session regarding the

need to avoid impacts outside of the approved construction area and to protect sensitive flora and fauna (e.g., explain the avian buffers and clarify acceptable access routes/methods and staging areas, etc.).

II. During Construction Monitoring-

All construction (including access/staging areas) shall be restricted to areas previously identified, proposed for development/staging, or previously disturbed as shown on "Exhibit A" and/or the Biological Construction Mitigation/Monitoring Exhibit. The Qualified Biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas, or cause other similar damage, and that the work plan has been amended to accommodate any sensitive species located during the preconstruction surveys. In addition, the Qualified Biologist shall document field activity via the Consultant Site Visit Record. The Consultant Site Visit Record shall be e-mailed to Mitigation Monitoring Coordination on the 1st day of monitoring, the 1st week of each month, the last day of monitoring, and immediately in the case of any undocumented condition or discovery.

A. Subsequent Resource Identification: The Qualified Biologist shall note/act to prevent any new disturbances to habitat, flora, and/or fauna on site (e.g., flag plant specimens for avoidance during access, etc). If active nests or other previously unknown sensitive resources are detected, all Project activities that directly impact the resource shall be delayed until species specific local, State or Federal regulations have been determined and applied by the Qualified Biologist.

III. Post Construction

A. In the event that impacts exceed previously allowed amounts, additional impacts shall be mitigated in accordance with City Biology Guidelines, ESL Ordinance and MSCP, CEQA, and other applicable local, State and Federal laws. The Qualified Biologist shall submit a final Biological Construction Mitigation/Monitoring Exhibit /report to the satisfaction of the City Assistant Deputy Director /MMC within 30 days of construction completion.

Mitigation for Direct Impacts to Upland Vegetation Communities

The Project will meet all required upland habitat mitigation through on-site preservation. Prior to the issuance of any construction permits, Project upland

impacts shall be mitigated in accordance with the City's LDC Biology Guidelines through placement of a Covenant of Easement (in favor of the City, CDFW and USFWS) over the preserved mitigation land on-site, as presented in Table 6. This table presents the mitigation for significant, direct impacts to non-native grassland (Tier IIIB).

Table 6 – Mitigation for Direct Impacts to Vegetation Communities

Vegetation Community	Impacts (Inside/Outside MHPA)	Mitigation Ratio	Required Mitigation
Non-native grassland	6.9	0.5:1 ¹	3.5
TOTAL	6.9	--	3.5

Source: Alden Environmental (2016)

Footnote:

¹ If the burrowing owl is found to be present during the preconstruction/take avoidance surveys, the 0.5:1 ratio would increase to 1:1 ratio resulting in a 0.3 acre shortage of non-native grassland mitigation on site. If this was to occur, it is proposed that 0.3 acre of what would be a total of 10.8 acres on site would be used for mitigation.

Note: Impacts associated with the future construction of Airway Road, which the project is not implementing, are detailed in the Project Biological Technical Report.

Direct impacts to 6.9 acres of non-native grassland would be mitigated through the preservation of 3.45 acres of non-native grassland on site. Under this scenario (i.e., the burrowing owl is absent), there would be 3.7 acres of non-native grassland not required for mitigation that would be preserved as surplus (after consideration for future impacts associated with the Airway Road extension). Should the burrowing owl be found during the pre-construction/take avoidance surveys, however, the required mitigation for impacts to non-native grassland outside the MHPA would double. Therefore, the total required mitigation could be 6.9 acres.

Ownership in fee title will be maintained by the subdivision Owner/Permittee. Prior to certificate of occupancy, the applicant shall identify a Habitat Manager pursuant to the Southview East Project Habitat Management Plan (HMP; Alden 2016a), to be approved by the City of San Diego, and submit evidence that a funding source has been secured to fully implement the HMP in perpetuity. Management of the land will be performed by the approved Habitat Manager, as directed by the HMP. The purpose of the HMP is to identify methods and means necessary to maintain and enhance habitat (and related wildlife) values of the preserved land in perpetuity.

Mitigation for Direct Impacts to Sensitive Animal Species

San Diego Black-tailed Jackrabbit, Raptor Foraging, and California Horned Lark

Direct impacts to San Diego black-tailed jackrabbit, raptor foraging, and California horned lark nonnative grassland habitat from the subdivision Project shall be mitigated through the on-site preservation of habitat as described above in *Mitigation for Direct Impacts to Upland Vegetation Communities*.

Burrowing Owls

Prior to Permit or Notice to Proceed Issuance:

1. As this Project site has been determined to be burrowing owl occupied or to have burrowing owl occupation potential, the Permit Holder shall submit evidence to the Assistant Deputy Director of Entitlements verifying that a Biologist possessing qualifications pursuant "Staff Report on Burrowing Owl Mitigation, State of California Natural Resources Agency Department of Fish and Game. March 7, 2012 (hereafter referred as CDFG 2012, Staff Report), has been retained to implement a burrowing owl construction impact avoidance program.
2. The Qualified burrowing owl Biologist (or their designated biological representative) shall attend the pre-construction meeting to inform construction personnel about the City's burrowing owl requirements and subsequent survey schedule.

Prior to Start of Construction:

1. The Permit Holder and Qualified Biologist must ensure that initial preconstruction/take avoidance surveys of the Project "site" are completed between 14 and 30 days before initial construction activities, including brushing, clearing, grubbing, or grading regardless of the time of the year. "Site" means the Project site and the area within a radius of 450 feet of the Project site. The report shall be submitted and approved by the Wildlife Agencies (WAs) and/or City MSCP staff prior to construction or burrowing owl eviction(s) and shall include maps of the Project site and burrowing owl locations on aerial photos.
2. The pre-construction survey shall follow the methods described in CDFG 2012, Staff Report -Appendix D (please note, in 2013, CDFG became California Department of Fish and Wildlife).
3. 24 hours prior to commencement of ground disturbing activities, the Qualified Biologist shall verify results of pre-construction/take avoidance

surveys. Verification shall be provided to the City's Mitigation Monitoring and Coordination (MMC) Section. If results of the pre-construction surveys have changed and burrowing owl are present in areas not previously identified, immediate notification to the City and WAs shall be provided prior to ground disturbing activities.

During Construction:

1. **Best Management Practices**-shall be employed as burrowing owl are known to use open pipes, culverts, excavated holes, and other burrow-like structures at construction sites. Legally permitted active construction projects which are burrowing owl occupied and have followed all protocol in this mitigation section, or sites within 450 feet of occupied burrowing owl areas, should undertake measures to discourage burrowing owls from re-colonizing previously occupied areas or colonizing new portions of the site. Such measures include, but are not limited to, ensuring that the ends of all pipes and culverts are covered when they are not being worked on, and covering rubble piles, dirt piles, ditches, and berms.

2. **On-going burrowing owl Detection** - If burrowing owls or active burrows are not detected during the pre-construction surveys, Section "A" below shall be followed. If burrowing owls or burrows are detected during the pre-construction surveys, Section "B" shall be followed. Neither the MSCP subarea plan nor this mitigation section allows for any burrowing owls to be injured or killed outside or within the MHPA; in addition, impacts to burrowing owls within the MHPA must be avoided.

A. Post Survey Follow-Up if burrowing owl and/or Signs of Active Natural or Artificial Burrows Are Not Detected During the Initial Pre-Construction Survey. Monitoring the site for new burrows is required using Appendix D protocol for the period following the initial pre-construction survey until construction is scheduled to be complete and is complete (NOTE - Using a projected completion date [that is amended if needed] will allow development of a monitoring schedule which adheres to the required number of surveys in the detection protocol).

1) If no active burrows are found but burrowing owls are observed to occasionally (1-3 sightings) use the site for roosting

or foraging, they should be allowed to do so with no changes in the construction or construction schedule.

2) If no active burrows are found but burrowing owls are observed during follow-up monitoring to repeatedly (4 or more sightings) use the site for roosting or foraging, the City's MMC Section shall be notified, and any portion of the site where owls have been observed and that has not been graded or otherwise disturbed shall be avoided until further notice.

3) If a burrowing owl begins using a burrow on the site at any time after the initial preconstruction survey, procedures described in Section B must be followed.

4) Any actions other than these require the approval of the City and the WAs.

B. Post Survey Follow-Up if burrowing owls and/or Active Natural or Artificial Burrows are detected during the Initial Pre-Construction Survey- Monitoring the site for new burrows is required using the Appendix D CDFG 2012 Staff Report for the period following the initial pre-construction survey until construction is scheduled to be complete and is complete (NOTE - Using a projected completion date [that is amended if needed] will allow development of a monitoring schedule which adheres to the required number of surveys in the detection protocol).

1) This section (B) applies only to sites (including biologically defined territory) wholly outside of the MHPA – **all direct and indirect impacts to burrowing owls within the MHPA SHALL be avoided.**

2) If one or more burrowing owls are using any burrows (including pipes, culverts, debris piles etc.) on or within 300 feet of the proposed construction area, the City's MMC Section shall be contacted. The City's MMC Section shall contact the WAs regarding eviction/collapsing burrows and shall enlist appropriate City biologist for on-going coordination with the WAs and the Qualified burrowing owl Biologist. No construction

shall occur within 300 feet of an active burrow without written concurrence from the WAs. This distance may increase or decrease, depending on the burrow's location in relation to the site's topography and other physical and biological characteristics.

a) **Outside the Breeding Season** - If the burrowing owl is using a burrow on site outside the breeding season (i.e., September 1 – January 31), the burrowing owl may be evicted after the qualified burrowing owl biologist has determined via fiber optic camera or other appropriate device, that no eggs, young, or adults are in the burrow and written concurrence from the WAs for eviction is obtained prior to implementation.

b) **During Breeding Season** - If a burrowing owl is using a burrow on site during the breeding season (February 1– August 31), construction shall not occur within 300 feet of the burrow until the young have fledged and are no longer dependent on the burrow, at which time the burrowing owls can be evicted. Eviction requires written concurrence from the WAs prior to implementation.

3. Survey Reporting During Construction - Details of construction surveys and evictions (if applicable) carried out shall be immediately (within 5 working days or sooner) reported to the City's MMC Section and the WAs and must be provided in writing (as by e-mail) and acknowledged to have been received by the required agencies and Development Services Department Staff member(s).

Post Construction:

1. Details of the all surveys and actions undertaken on site with respect to burrowing owls (i.e., occupation, eviction, locations, etc.) shall be reported to the City's MMC Section and the WAs within 21 days post-construction and prior to the release of any grading bonds. This report must include summaries off all previous reports for the site, maps of the Project site, and burrowing owl locations on aerial photos.

Avian Protection

Mitigation Measure BIO-2 from the OMCP FEIR requires implementation of mitigation to comply with the FESA, MBTA, Bald and Golden Eagle Protection Act, California Fish and Game Code, and/or the ESL Regulations. To protect nesting birds, vegetation clearing for the subdivision Project shall take place outside the general avian breeding season (which generally occurs from February 1 through September 15). See *Avian Protection, Subsection I.E, Avian Protection Requirements*, above, for more details.

Noise

In order to avoid potential interior noise impact due to transportation noise from SR-905, the following mitigation measure shall be implemented by the Project applicant:

An interior noise analysis would be required to be approved by the City's Building Inspection Department upon application for a building permit. This interior noise analysis must identify the sound transmission loss requirements for building façade elements (windows, walls, doors, and exterior wall assemblies) necessary to limit interior noise in habitable rooms to 45 dBA CNEL or below. Upgraded windows and/or doors with Sound Transmission Class (STC) ratings of 30 or higher may be necessary. If the interior noise limit can be achieved only with the windows closed, the building design must include mechanical ventilation that meets California Building Code (CBC) requirements. Worst-case noise levels, either existing or future, must be used.

With the implementation of the findings of the interior noise analysis, interior noise levels in habitable rooms would be 45 dBA CNEL or below and comply with the California Code of Regulations, Title 24: Noise Insulation Standard City of San Diego General Plan Noise Compatibility Guidelines requirement.

All HVAC units shall be placed over 40 feet from Project property lines, or HVAC units shall produce a sound power level of 63 dBA Leq or below, which would reduce property line noise levels to 45 dBA Leq or below.

Prior to commencement of Project construction, placement of a 10-foot-high noise barrier along the full west property line shall be completed, or time restrictions on construction activity within 315 feet of the west property line shall be implemented to reduce construction noise levels at the west Project property line to 75 dBA Leq

(12 hours) or below. With this noise mitigation, Project construction noise levels would comply with City of San Diego construction noise limits.

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 or occupancy and/or final maps to ensure the successful completion of the monitoring program.

FEB 07 2017

Passed by the Council of The City of San Diego on _____, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

FEB 07 2017

Date of final passage _____.


(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

<p>Office of the City Clerk, San Diego, California</p> <p>Resolution Number R- 310940</p>
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