

RESOLUTION NUMBER R- 311325

DATE OF FINAL PASSAGE SEP 19 2017

ITEM # 331A  
9/19/17

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO ADOPTING MITIGATED NEGATIVE DECLARATION NO. 202998/SCH NO. 2015051020 AND MITIGATION, MONITORING, AND REPORTING PROGRAM FOR THE OTAY TRUCK ROUTE PHASE IV PROJECT – PROJECT NO. 202998.

WHEREAS, the City of San Diego Public Works Department submitted an application to Development Services Department for a Site Development Permit for the Otay Truck Route Phase IV (Project); and

WHEREAS, the matter was set for 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 September 19, 2017; 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 considered the issues discussed in Mitigated Negative Declaration No. 202998/SCH No. 2015051020 (Declaration) prepared for this Project; NOW, THEREFORE,

BE IT RESOLVED, by the City Council that it is certified that the Declaration has been completed in compliance 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.), that the Declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said Declaration, 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.

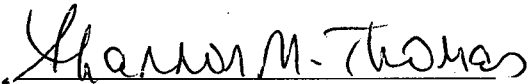
BE IT FURTHER RESOLVED, that the City Council finds on the basis of the entire record that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study, that there is no substantial evidence that the Project will have a significant effect on the environment, and therefore, that said Declaration is hereby adopted.

BE IT FURTHER RESOLVED, that pursuant to CEQA 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 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 Declaration and other documents constituting the record of proceedings upon which the approval is based are available to the public at the office of the City Clerk, 202 C Street, San Diego, CA 92101.

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.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Shannon M. Thomas  
Deputy City Attorney

SMT:als  
08/23/2017  
Or.Dept:DSD  
Doc. No.: 1543368

Attachment: Exhibit A – Mitigation, Monitoring, and Reporting Program

## EXHIBIT A

### MITIGATION, MONITORING, AND REPORTING PROGRAM

#### MITIGATED NEGATIVE DECLARATION NO. 202998

#### OTAY TRUCK ROUTE PHASE IV PROJECT

#### PROJECT NO. 202998

This Mitigation, Monitoring, and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation, Monitoring, and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA, 92101. All mitigation measures contained in the Mitigated Negative Declaration No. 202998/SCH No. 2015051020 shall be made conditions of Site Development Permit No. 733102 as may be further described below.

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

1. Prior to the issuance of a Notice to Proceed or Bid Opening/Bid Award, whichever is applicable, 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: Not applicable.

**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 is also required to call **RE and MMC at 858-627-3360**
2. **MMRP COMPLIANCE:** This Project, Project Tracking System (PTS) Number 202998 and/or Environmental Document Number 202998, 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: **Army Corps of Engineers (ACOE), U.S. Fish & Wildlife Service (USFWS), California Department of Fish & Wildlife (CDFW), Regional Water Quality Control Board (RWQCB)**

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 |   |   |
|---|---|---|
| Issue Area                              | Document Submittal                          | Associated Inspection/Approvals/Notes               |
| General                                 | Consultant Qualification Letters            | Prior to Preconstruction Meeting                    |
| General                                 | Consultant Construction Monitoring Exhibits | Prior to or at Preconstruction Meeting              |
| Land Use                                | Land Use Adjacency Issues CVSRs             | Land Use Adjacency Issue Site Observations          |
| Biology                                 | Biologist Limit of Work Verification        | Limit of Work Inspection                            |
| Biology                                 | Biology Reports                             | Biology/Habitat Restoration Inspection              |
| Bond Release                            | Request for Bond Release Letter             | Final MMRP Inspections Prior to Bond Release Letter |

**C. SPECIFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS**

Biological Resources

Prior to the issuance of a Notice to Proceed or Bid Opening/Bid Award, whichever is applicable, direct impacts to sensitive upland and wetland habitats identified in Table 1 (Table 1 within Otay Truck Route Phase IV Project, Conceptual Habitat Restoration Mitigation Plan, prepared by AECOM, dated December 2014) would be mitigated in

accordance with mitigation ratios required by the City of San Diego's Biology Guidelines satisfactory to the ADD Environmental Designee of DSD.

**Project Impacts and Mitigation Ratios for Natural Communities**

| <b>Vegetation Community/<br/>Land Cover Type</b> | <b>Project<br/>Impacts<br/>(acres)</b> | <b>Mitigation<br/>Ratio<br/>if Preserved<br/>Inside MHP<br/>A</b> | <b>Mitigation<br/>Ratio<br/>if Preserved<br/>Outside MHP<br/>A</b> | <b>Mitigation<br/>Required<br/>Inside<br/>MHPA</b> | <b>Mitigation<br/>Required<br/>Outside<br/>MHPA</b> |
|--|--|---|--|--|---|
| <b>UPLANDS</b>                                   |  |   |  |  |   |
| Native Annual Grassland <sup>a</sup>             | 4.29                                   | 1:1   | 2:1  | 4.29   | 8.58  |
| Nonnative Annual Grassland                       | 1.33                                   | 0.5:1   | 1:1  | 0.67   | 1.33  |
| Disturbed Habitat                                | 3.46                                   | 0.5:1   | 1:1  | 1.73   | 3.46  |
| Developed  | 8.22                                   | 0:1   | 0:1  | 0  | 0   |
| Saltbush scrub <sup>a</sup>                      | 0.00                                   | 1:1   | 1.5:1  | 0  | 0   |
| Subtotal/Uplands                                 | 17.3                                   |   |  | 6.69   | 13.37   |
| <b>WETLANDS</b>                                  |  |   |  |  |   |
| Mulefat scrub <sup>a</sup>                       | 0.02                                   | 2:1   | 2:1  | 0.04   | 0.04  |
| Freshwater Marsh <sup>a</sup>                    | 0.04                                   | 2:1   | 2:1  | 0.08   | 0.08  |
| Freshwater Seep <sup>a</sup>                     | 0.09                                   | 2:1 to 4:1  | 2:1 to 4:1   | 0.18 to<br>0.36                                    | 0.18 to<br>0.36                                     |
| Vernal Pool <sup>a,b</sup>                       | 0.15                                   | 2:1 to 4:1  | 2:1 to 4:1   | 0.30 to<br>0.6                                     | 0.30 to<br>0.6                                      |
| Subtotal/Wetlands                                | 0.27 <sup>b</sup>                      |   |  | 0.58 to<br>1.06 <sup>c</sup>                       | 0.58 to<br>1.06 <sup>c</sup>                        |

<sup>a</sup> Natural community of special concern

<sup>b</sup> The project does not have direct impacts on vernal pools but would have an indirect impact on vernal pool watersheds; vernal pool impacts are calculated as the total acreage of all pools for which the pools or their associated watersheds fall within a 50-foot buffer from the project's impact area.

<sup>c</sup> All acreages are rounded to the nearest hundredth, as applicable (which may account for minor rounding error).

**BIOLOGICAL RESOURCES (MITIGATION SITE)**

Prior to the issuance of a Notice to Proceed or Bid Opening/Bid Award, whichever is applicable, the ADD Environmental Designee of DSD shall verify that one of the following mitigation options as identified within the conceptual restoration plans (Otay Truck Route Phase IV Project, Conceptual Habitat Restoration Mitigation Plan, prepared by AECOM, dated December 2014; and the Vernal Pool and Maritime Succulent Scrub/Coastal Sage Scrub Habitat Restoration Plan Anderprises Parcels Otay Mesa San Diego, California EA 2E040, prepared by CALTRANS, dated March 2015 for Option 2) listed below has been secured to mitigated impacts as identified in Table 1:

- Option 1: Onsite Mitigation
- Option 2: Anderprises Parcels Otay Mesa

**BIOLOGICAL RESOURCES (RESTORATION MITIGATION PLAN – FINAL APPROVAL)**

Thirty days prior to the first preconstruction meeting or Notice to Proceed or Bid Opening/Bid Award whichever is applicable, the applicant shall submit to the ADD Environmental Designee of DSD the final restoration mitigation plan that has been reviewed and accepted by both City of San Diego’s EAS and MSCP staff. In addition, the applicant shall provide documentation that the applicable Resource Agencies have reviewed and accepted the final restoration mitigation plan.

**BIOLOGICAL RESOURCES (RESTORATION/REVEGETATION PLAN - IMPLEMENTATION)**

Prior to the issuance of a Notice to Proceed or Bid Opening/Bid Award, whichever is applicable, the Assistant Deputy Director (ADD) Environmental Designee of DSD shall verify that the following statement is shown on the grading and/or construction plans as a note under the heading *Environmental Requirements*: “Otay Truck Route Phase IV is subject to Mitigation, Monitoring, and Reporting Program and shall conform to the mitigation conditions as contained in the Mitigated Negative Declaration No. 202998/SCH No. To Be Determined.”

**Prior to Permit Issuance**

- A. Land Development Review (LDR) Plan Check
  - 1. Prior to a Notice to Proceed or Bid Opening/Bid Award, whichever is applicable, the ADD environmental designee shall verify that the requirements for the revegetation/restoration plans and specifications, including mitigation of direct impacts to uplands and wetlands in accordance with Table 1 above have been shown and noted on the appropriate landscape construction documents. The landscape construction documents and specifications must be found to be in conformance with the conceptual restoration plan (Otay Truck Route Phase IV Project, Conceptual Habitat Restoration Mitigation Plan, prepared by AECOM, dated December 2014), the requirements of which are summarized below:
- B. Revegetation/Restoration Plan(s) and Specifications
  - 1. Landscape Construction Documents (LCD) shall be prepared on D-sheets and submitted to the City of San Diego Development Services Department, Landscape Architecture Section (LAS) for review and approval. LAS shall consult with Mitigation Monitoring Coordination (MMC) and obtain concurrence prior to approval of LCD. The LCD shall consist of revegetation/restoration, planting, irrigation and erosion control plans; including all required graphics, notes, details, specifications, letters, and reports as outlined below.



2. Landscape Revegetation/Restoration Planting and Irrigation Plans shall be prepared in accordance with the San Diego Land Development Code (LDC) Chapter 14, Article 2, Division 4, the LDC Landscape Standards submittal requirements, and Attachment "B" (General Outline for Revegetation/Restoration Plans) of the City of San Diego's LDC Biology Guidelines (July 2002). The Principal Qualified Biologist (PQB) shall identify and adequately document all pertinent information concerning the revegetation/restoration goals and requirements, such as but not limited to, plant/seed palettes, timing of installation, plant installation specifications, method of watering, protection of adjacent habitat, erosion and sediment control, performance/success criteria, inspection schedule by City staff, document submittals, reporting schedule, etc. The LCD shall also include comprehensive graphics and notes addressing the ongoing maintenance requirements (after final acceptance by the City).
3. The Revegetation Installation Contractor (RIC), Revegetation Maintenance Contractor (RMC), Construction Manager (CM) and Grading Contractor (GC), where applicable shall be responsible to insure that for all grading and contouring, clearing and grubbing, installation of plant materials, and any necessary maintenance activities or remedial actions required during installation and the 120 day plant establishment period are done per approved LCD. The following procedures at a minimum, but not limited to, shall be performed:
  - a. The RMC shall be responsible for the maintenance of the upland/wetland mitigation area for a minimum period of 120 days. Maintenance visits shall be conducted on a weekly basis throughout the plant establishment period.
  - b. At the end of the 120-day period the PQB shall review the mitigation area to assess the completion of the short-term plant establishment period and submit a report for approval by MMC.
  - c. MMC will provide approval in writing to begin the five-year long-term establishment/maintenance and monitoring program.
  - d. Existing indigenous/native species shall not be pruned, thinned or cleared in the revegetation/mitigation area.
  - e. The revegetation site shall not be fertilized.
  - f. The RIC is responsible for reseeding (if applicable) if weeds are not removed, within one week of written recommendation by the PQB.
  - g. Weed control measures shall include the following: (1) hand removal, (2) cutting, with power equipment, and (3) chemical control. Hand removal of weeds is the most desirable method of control and will be used wherever possible.
  - h. Damaged areas shall be repaired immediately by the RIC/RMC. Insect infestations, plant diseases, herbivory, and other pest problems will be closely monitored throughout the five-year maintenance period. Protective mechanisms such as metal wire netting shall be used as necessary. Diseased and infected plants

shall be immediately disposed of off-site in a legally acceptable manner at the discretion of the PQB or Qualified Biological Monitor (QBM) (City approved). Where possible, biological controls will be used instead of pesticides and herbicides.

4. If a Brush Management Program is required the revegetation/restoration plan shall show the dimensions of each brush management zone and notes shall be provided describing the restrictions on planting and maintenance and identify that the area is impact neutral and shall not be used for habitat mitigation/credit purposes.

C. Letters of Qualification Have Been Submitted to ADD

1. The applicant shall submit, for approval, a letter verifying the qualifications of the biological professional to MMC. This letter shall identify the PQB, Principal Restoration Specialist (PRS), and QBM, where applicable, and the names of all other persons involved in the implementation of the revegetation/restoration plan and biological monitoring program, as they are defined in the City of San Diego Biological Review References. Resumes and the biology worksheet should be updated annually.
2. MMC will provide a letter to the applicant confirming the qualifications of the PQB/PRS/QBM and all City Approved persons involved in the revegetation/restoration plan and biological monitoring of the project.
3. Prior to the start of work, the applicant must obtain approval from MMC for any personnel changes associated with the revegetation/restoration plan and biological monitoring of the project.
4. PBQ must also submit evidence to MMC that the PQB/QBM has completed Storm Water Pollution Prevention Program (SWPPP) training.

**Prior to Start of Construction**

A. PQB/PRS Shall Attend Preconstruction (Precon) Meetings

1. Prior to beginning any work that requires monitoring:
  - a. The owner/permittee or their authorized representative shall arrange and perform a Precon Meeting that shall include the PQB or PRS, Construction Manager (CM) and/or Grading Contractor (GC), Landscape Architect (LA), Revegetation Installation Contractor (RIC), Revegetation Maintenance Contractor (RMC), Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC.
  - b. The PQB shall also attend any other grading/excavation related Precon Meetings to make comments and/or suggestions concerning the revegetation/restoration plan(s) and specifications with the RIC, CM and/or GC.
  - c. If the PQB is unable to attend the Precon Meeting, the owner shall schedule a focused Precon Meeting with MMC, PQB/PRS, CM, BI, LA, RIC, RMC, RE and/or BI, if appropriate, prior to the start

- of any work associated with the revegetation/ restoration phase of the project, including site grading preparation.
2. Where Revegetation/Restoration Work Will Occur
    - a. Prior to the start of any work, the PQB/PRS shall also submit a revegetation/restoration monitoring exhibit (RRME) based on the appropriate reduced LCD (reduced to 11"x 17" format) to MMC, and the RE, identifying the areas to be revegetated/restored including the delineation of the limits of any disturbance/grading and any excavation.
    - b. PQB shall coordinate with the construction superintendent to identify appropriate Best Management Practices (BMP's) on the RRME.
  3. When Biological Monitoring Will Occur
    - a. Prior to the start of any work, the PQB/PRS shall also submit a monitoring procedures schedule to MMC and the RE indicating when and where biological monitoring and related activities will occur.
  4. PQB Shall Contact MMC to Request Modification
    - a. The PQB may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the revegetation/restoration plans and specifications. This request shall be based on relevant information (such as other sensitive species not listed by federal and/or state agencies and/or not covered by the MSCP and to which any impacts may be considered significant under CEQA), which may reduce or increase the potential for biological resources to be present.

### During Construction

- A. PQB or QBM Present During Construction/Grading/Planting
  1. The PQB or QBM shall be present full-time during construction activities including but not limited to, site preparation, cleaning, grading, excavation, landscape establishment in association with construction and/or grading activities, which could result in impacts to sensitive biological resources as identified in the LCD and on the RRME. **The RIC and/or QBM are responsible for notifying the PQB/PRS of changes to any approved construction plans, procedures, and/or activities. The PQB/PRS is responsible to notify the CM, LA, RE, BI and MMC of the changes.**
  2. The PQB or QBM shall document field activity via the Consultant Site Visit Record Forms (CSVSR). The CSVSR's shall be faxed by the CM the first day of monitoring, the last day of monitoring, monthly, and in the event that there is a deviation from conditions identified within the LCD and/or biological monitoring program. The RE shall forward copies to MMC.

3. The PQB or QBM shall be responsible for maintaining and submitting the CSVR at the time that CM responsibilities end (i.e., upon the completion of construction activity other than that of associated with biology).
4. All construction activities (including staging areas) shall be restricted to the development areas as shown on the LCD. The PQB/PRS or QBM staff shall monitor construction activities as needed, with MMC concurrence on method and schedule. This is to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved LCD.
5. The PQB or QBM shall supervise the placement of orange construction fencing or City approved equivalent, along the limits of potential disturbance adjacent to (or at the edge of) all sensitive habitats as identified within approved biological report and the conceptual habitat restoration mitigation plan prepared by AECOM (Otay Truck Route Phase IV Project City of San Diego Biology Guidelines Consistency Summary, dated March 2015 and the Otay Truck Route Phase IV Project Conceptual Habitat Restoration Mitigation Plan, dated December 2014, as shown on the approved LCD.
6. The PBQ shall provide a letter to MMC that limits of potential disturbance has been surveyed, staked and that the construction fencing is installed properly.
7. The PQB or QBM shall oversee implementation of BMP's, such as gravel bags, straw logs, silt fences or equivalent erosion control measures, as needed to ensure prevention of any significant sediment transport. In addition, the PQB/QBM shall be responsible to verify the removal of all temporary construction BMP's upon completion of construction activities. Removal of temporary construction BMP's shall be verified in writing on the final construction phase CSVR.
8. PQB shall verify in writing on the CSVR's that no trash stockpiling or oil dumping, fueling of equipment, storage of hazardous wastes or construction equipment/material, parking or other construction related activities shall occur adjacent to sensitive habitat. These activities shall occur only within the designated staging area located outside the area defined as biological sensitive area.
9. The long-term establishment inspection and reporting schedule per LCD must all be approved by MMC prior to the issuance of the Notice of Completion (NOC) or any bond release.

B. Disturbance/Discovery Notification Process

1. If unauthorized disturbances occurs or sensitive biological resources are discovered that were not previously identified on the LCD and/or RRME, the PQB or QBM shall direct the contractor to temporarily divert construction in the area of disturbance or discovery and immediately notify the RE or BI, as appropriate.
2. The PQB shall also immediately notify MMC by telephone of the disturbance and report the nature and extent of the disturbance and

recommend the method of additional protection, such as fencing and appropriate Best Management Practices (BMP's). After obtaining concurrence with MMC and the RE, PQB and CM shall install the approved protection and agreement on BMP's.

3. The PQB shall also submit written documentation of the disturbance to MMC within 24 hours by fax or email with photos of the resource in context (e.g., show adjacent vegetation).

C. Determination of Significance

1. The PQB shall evaluate the significance of disturbance and/or discovered biological resource and provide a detailed analysis and recommendation in a letter report with the appropriate photo documentation to MMC to obtain concurrence and formulate a plan of action, which can include fines, fees, and supplemental mitigation costs.
2. MMC shall review this letter report and provide the RE with MMC's recommendations and procedures.

**Post Construction**

A. Mitigation Monitoring and Reporting Period

1. Five-Year Mitigation Establishment/Maintenance Period
  - a. The RMC shall be retained to complete maintenance monitoring activities throughout the five-year mitigation monitoring period.
  - b. Maintenance visits will be conducted twice per month for the first six months, once per month for the remainder of the first year, and quarterly thereafter.
  - c. Maintenance activities will include all items described in the LCD.
  - d. Plant replacement will be conducted as recommended by the PQB (note: plants shall be increased in container size relative to the time of initial installation or establishment or maintenance period may be extended to the satisfaction of MMC).
2. Five-Year Biological Monitoring
  - a. All biological monitoring and reporting shall be conducted by a PQB or QBM, as appropriate, consistent with the LCD.
  - b. Monitoring shall involve both qualitative horticultural monitoring and quantitative monitoring (i.e., performance/success criteria). Horticultural monitoring shall focus on soil conditions (e.g., moisture and fertility), container plant health, seed germination rates, presence of native and non-native (e.g., invasive exotic) species, any significant disease or pest problems, irrigation repair and scheduling, trash removal, illegal trespass, and any erosion problems.
  - c. After plant installation is complete, qualitative monitoring surveys will occur monthly during year one and quarterly during years two through five.

- d. Upon the completion of the 120-days short-term plant establishment period, quantitative monitoring surveys shall be conducted at 0, 6, 12, 24, 36, 48 and 60 months by the PQB or QBM. The revegetation/restoration effort shall be quantitatively evaluated once per year (in spring) during years three through five, to determine compliance with the performance standards identified on the LCD. All plant material must have survived without supplemental irrigation for the last two years.
- e. Quantitative monitoring shall include the use of fixed transects and photo points to determine the vegetative cover within the revegetated habitat. Collection of fixed transect data within the revegetation/restoration site shall result in the calculation of percent cover for each plant species present, percent cover of target vegetation, tree height and diameter at breast height (if applicable) and percent cover of non-native/non invasive vegetation. Container plants will also be counted to determine percent survivorship. The data will be used determine attainment of performance/success criteria identified within the LCD.
- f. Biological monitoring requirements may be reduced if, before the end of the fifth year, the revegetation meets the fifth year criteria and the irrigation has been terminated for a period of the last two years.
- g. The PQB or QBM shall oversee implementation of post-construction BMP's, such as gravel bags, straw logs, silt fences or equivalent erosion control measure, as needed to ensure prevention of any significant sediment transport. In addition, the PBQ/QBM shall be responsible to verify the removal of all temporary post-construction BMP's upon completion of construction activities. Removal of temporary post-construction BMPs shall be verified in writing on the final post-construction phase CSV.

B. Submittal of Draft Monitoring Report

- 1. A draft monitoring letter report shall be prepared to document the completion of the 120-day plant establishment period. The report shall include discussion on weed control, horticultural treatments (pruning, mulching, and disease control), erosion control, trash/debris removal, replacement planting/reseeding, site protection/signage, pest management, vandalism, and irrigation maintenance. The revegetation/restoration effort shall be visually assessed at the end of 120-day period to determine mortality of individuals.
- 2. The PQB shall submit two copies of the Draft Monitoring Report, which describes the results, analysis, and conclusions of all phases of the Biological Monitoring and Reporting Program (with appropriate graphics) to MMC for review and approval within 30 days following the completion of monitoring. Monitoring reports shall be prepared on an annual basis for a period of five years. Site progress reports shall be prepared by the PQB

following each site visit and provided to the owner, RMC and RIC. Site progress reports shall review maintenance activities, qualitative and quantitative (when appropriate) monitoring results including progress of the revegetation relative to the performance/success criteria, and the need for any remedial measures.

3. Draft annual reports (three copies) summarizing the results of each progress report including quantitative monitoring results and photographs taken from permanent viewpoints shall be submitted to MMC for review and approval within 30 days following the completion of monitoring.
4. MMC shall return the Draft Monitoring Report to the PQB for revision or, for preparation of each report.
5. The PQB shall submit revised Monitoring Report to MMC (with a copy to RE) for approval within 30 days.
6. MMC will provide written acceptance of the PQB and RE of the approved report.

C. Final Monitoring Reports(s)

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

D. Habitat Management – The Owner/Permittee shall be responsible for funding and implementing the long-term management of the mitigation site in perpetuity. A draft long-term management plan shall be submitted and approved by the City (DSD/EAS, Planning/MSCP, Park & Recreation Department, and Wildlife Agencies).

## **BIOLOGICAL RESOURCES (RESOURCE PROTECTION DURING CONSTRUCTION)**

### **I. Prior to Construction or a Notice to Proceed, whichever is applicable**

- 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. **Preconstruction Meeting:** The Qualified Biologist shall attend the 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, Multiple Species Conservation Program (MSCP), Environmentally Sensitive Lands Ordinance (ESL), project permit conditions; California Environmental Quality Act (CEQA); endangered species acts (ESAs); 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 (BCME) 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 owl 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 ADD/MMC. The BCME shall include a site plan, written and graphic depiction of the project's biological mitigation/monitoring program, and a schedule. The BCME 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 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 DSD 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 for review and approval and implemented to the satisfaction of the City. The City's MMC Section or RE, and Biologist shall verify and approve that all measures identified in the report or mitigation plan are in place prior to and/or during construction.

- F. **Resource Delineation:** Prior to construction activities, the Qualified Biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance adjacent to sensitive biological habitats and verify compliance with any other project conditions as shown on the BCME. This phase shall include flagging plant specimens and delimiting buffers to protect sensitive biological resources (e.g., habitats/flora & 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 and wetland buffers, flag system for removal of invasive species or retention of sensitive plants, and clarify acceptable access routes/methods and staging areas, etc.).

## II. During Construction

- A. **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 BCME. 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 pre-construction surveys. In addition, the Qualified Biologist shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR shall be e-mailed to MMC on the 1<sup>st</sup> day of monitoring, the 1<sup>st</sup> week of each month, the last day of monitoring, and immediately in the case of any undocumented condition or discovery.
- B. **Subsequent Resource Identification:** The Qualified Biologist shall note/act to prevent any new disturbances to habitat, flora, and/or fauna onsite (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 Measures**

- A. In the event that impacts exceed previously allowed amounts, additional impacts shall be mitigated in accordance with City Biology Guidelines, ESL and MSCP, State CEQA, and other applicable local, state and federal law. The Qualified Biologist shall submit a final BCME/report to the satisfaction of the City ADD/MMC within 30 days of construction completion.

#### **BIOLOGICAL RESOURCES (GENERAL BIRDS)**

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 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 (precon) 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 precon survey to City DSD 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 DSD for review and approval and implemented to the satisfaction of the City. The City's MMC Section or RE, and 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.

#### **BIOLOGICAL RESOURCES (WESTERN BURROWING OWL)**

##### **I. Prior to a Notice to Proceed or Bid Opening/Bid Award, whichever is applicable:**

1. As this project has been determined to be Burrowing Owl (BUOW) occupied or to have BUOW occupation potential, the Permit Holder shall submit evidence to the ADD of LDR 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 BUOW biologist (or their designated biological representative) shall attend the pre-construction meeting to inform construction personnel about the City's BUOW requirements and subsequent survey schedule.

## II. Prior to Start of Construction:

1. The Permit Holder and Qualified Biologist must ensure that initial pre-construction/take avoidance surveys of the project "site" are completed between 14 and 30 days before initial construction activities, including brushing, clearing, grubbing, or grading of the project site; 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 and/or City MSCP staff prior to construction or BUOW eviction(s) and shall include maps of the project site and BUOW 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 or CDFW*).
3. 24 hours prior to commencement of ground disturbing activities, the Qualified Biologist shall verify results of preconstruction/take avoidance surveys. Verification shall be provided to the City's Mitigation Monitoring and Coordination (MMC) Section. If results of the preconstruction surveys have changed and BUOW are present in areas not previously identified, immediate notification to the City and WA's shall be provided prior to ground disturbing activities.

## III. During Construction:

1. **Best Management Practices shall be employed as** BUOWs are known to use open pipes, culverts, excavated holes, and other burrow-like structures at construction sites. Legally permitted active construction projects which are BUOW occupied and have followed all protocol in this mitigation section, or sites within 450 feet of occupied BUOW areas, should undertake measures to discourage BUOWs from recolonizing 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 BUOW Detection** - If BUOWs or active burrows are not detected during the pre-construction surveys, Section "A" below shall be followed. If BUOWs 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 BUOWs TO BE INJURED OR KILLED OUTSIDE **OR** WITHIN THE MHPA; in addition, IMPACTS TO BUOWs WITHIN THE MHPA MUST BE AVOIDED.

### A. **Post Survey Follow Up if Burrowing Owls 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*)

- i) If no active burrows are found but BUOWs 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.
- ii) If no active burrows are found but BUOWs are observed during follow up monitoring to repeatedly (4 or more sightings) use the site for roosting or foraging, the City's Mitigation Monitoring and Coordination (MMC) Section shall be notified and any portion of the site where owls have been sites and that has not been graded or otherwise disturbed shall be avoided until further notice.
- iii) If a BUOW begins using a burrow on the site at any time after the initial pre-construction survey, procedures described in Section B must be followed.
- iv) Any actions other than these require the approval of the City and the Wildlife Agencies.

**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 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*).

- i) This section (B) applies only to sites (including biologically defined territory) wholly outside of the MHPA – **all direct and indirect impacts to BUOWs within the MHPA SHALL be avoided.**
- ii) If one or more BUOWs 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 Wildlife Agencies regarding eviction/collapsing burrows and enlist appropriate City biologist for on-going coordination with the Wildlife Agencies and the qualified consulting BUOW biologist. No construction shall occur within 300 feet of an active burrow without written concurrence from the Wildlife Agencies. 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 BUOW is using a burrow on site outside the breeding season (i.e. September 1 – January 31), the BUOW may be evicted after the qualified BUOW 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 Wildlife Agencies for eviction is obtained prior to implementation.
  - b) **During Breeding Season** - If a BUOW is using a burrow on-site during the breeding season (Feb 1-Aug 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 BUOWs can be evicted. Eviction requires written concurrence from the Wildlife Agencies 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 Wildlife Agencies and must be provided in writing (as by e-mail) and acknowledged to have been received by the required Agencies and DSD Staff member(s).

#### **IV. Post Construction:**

1. Details of the all surveys and actions undertaken on-site with respect to BUOWs (i.e. occupation, eviction, locations etc.) shall be reported to the City's MMC Section and the Wildlife Agencies 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; and maps of the project site and BUOW locations on aerial photos.

#### **BIOLOGICAL RESOURCES (VERNAL POOL PROTECTION DURING CONSTRUCTION)**

Prior to grading and/or construction activities, whichever is applicable, the Qualified Biologist shall implement the following measures and verify compliance with any other project conditions as shown on the BCME.

1. Placement of sediment fencing intended to protect vernal pools shall implemented in accordance with the Storm Water Pollution Prevention Plan (SWPPP).
2. Trenching within vernal pool watershed areas shall be precluded.
3. All vernal pools within 500 feet of the project footprint shall be identified and labeled as "environmentally sensitive areas" on project construction plans. Occupied habitat shall be clearly marked in the field with markers and exclusion fencing. Known populations and restricted areas shall be monitored by the project biologist (familiar with the habitat of the species) during construction.
4. Prior to construction, a preapproved and qualified fairy shrimp biologist shall

- coordinate with USFWS to identify and implement location-specific avoidance and minimization measures.
5. A biological monitor shall be provided to observe all construction work in the vicinity of vernal pools.

**BIOLOGICAL RESOURCES (OTAY TARPLANT)**

Prior to grading and/or construction activities, whichever is applicable, the Qualified Biologist shall implement the following measures and verify compliance with any other project conditions as shown on the BCME.

1. Otay tarplant shall be replanted or reseeded at a 3:1 ratio of individuals directly impacted by the project based on area impacted, population density, and seed propagation.
2. Otay tarplant seed shall be approved for collection in the field-season year prior to project construction, and shall be collected on-site in areas that shall be directly impacted by project implementation and operation. Otay tarplant shall be grown off site, and either seeds or plants will be planted at a selected site for mitigation. Mitigation planting shall occur as close to the impacted site as possible to keep the genetic material near the source. Otay tarplant may be planted in the project's 500-foot buffer area or another nearby approved location. Otay tarplant or Otay tarplant seed shall be planted in a mitigation site with clay soils (i.e., stockpen gravelly clay loam) and maintained as weed free. If the on-site option for the vernal pool mitigation is approved by the applicable Resource Agencies, the final habitat restoration mitigation plan shall include plans and methods for translocating the impacted Otay tarplant into the upland watershed areas that are being protected on behalf of the vernal pool restoration.

Passed by the Council of The City of San Diego on SEP 19 2017, 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 type="checkbox"/>            | <input type="checkbox"/> | <input checked="" 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"/> |

Date of final passage SEP 19 2017.

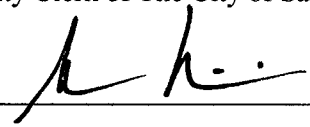
**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

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

Office of the City Clerk, San Diego, California

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Resolution Number R-\_\_\_\_\_