

RESOLUTION NUMBER R- 311775

ADOPTED ON MAY 22 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO CERTIFYING ENVIRONMENTAL IMPACT REPORT NO. 360009/SCH NO. 2014071065, ADOPTING THE FINDINGS, STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING THE MITIGATION, MONITORING, AND REPORTING PROGRAM FOR MERGE 56 – PROJECT NO. 360009.

WHEREAS, on July 21, 2014, SEA BREEZE 56, LLC, a Delaware Limited Liability Company, submitted an application to Development Services Department for an Amendment to the General Plan and the Torrey Highlands - Subarea IV and the Rancho Peñasquitos Community Plans, Rezone, Planned Development Permit, Site Development Permit, Conditional Use Permit, Vesting Tentative Map, Easement Vacation, and Public Right-of-way Vacation, for the Merge 56 (Project); and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the issue was heard by the City Council on MAY 22 2018 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 City Council is 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 Environmental Impact Report No. 360009/SCH No. 2014071065 (Report) prepared for this Project; NOW,

THEREFORE,

BE IT RESOLVED, by the City Council that it is certified that the Report 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 Report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said Report, together with any comments received during the public review process, has been reviewed and considered by the City Council in connection with the approval of the Project.


BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081 and State CEQA Guidelines Section 15091, the City Council hereby adopts the Findings made with respect to the Project, and that pursuant to State CEQA Guidelines Section 15093, the City Council hereby adopts the Statement of Overriding Considerations with respect to the Project, which is attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081.6, the 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 B.

BE IT FURTHER RESOLVED, that the Report 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:   
Keely M. Halsey  
Deputy City Attorney

KMH:als  
05/02/18  
Or.Dept: DSD  
Doc. No. 1684867

ATTACHMENT(S): Exhibit A, Findings/Statement of Overriding Considerations  
Exhibit B, Mitigation, Monitoring, and Reporting Program

## EXHIBIT A

### FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS REGARDING THE ENVIRONMENTAL IMPACT REPORT FOR THE MERGE 56 PROJECT

Project No. 360009  
SCH No. 2014071065  
May 2018

#### SECTION 1: THE PROJECT

##### I. PROJECT DESCRIPTION

The Merge 56 Project (project) is comprised of two project components, a mixed-use development and public road improvements to complete undeveloped segments of Camino Del Sur and Carmel Mountain Road, Circulation Element roads. The Merge 56 site (sometimes referred to herein as the "site" or "project site") is located in the north-central portion of the City of San Diego (City). The site is situated in the communities of Torrey Highlands and Rancho Peñasquitos, immediately south of the State Route 56 (SR-56) right-of-way (ROW) near the SR-56/Camino Del Sur interchange. Regional access to the site is from SR-56, Interstate 5 and Interstate 15; local access to the site is from the southern termini of Camino Del Sur and Carmel Mountain Road, as well as from the existing section of Camino Del Sur between Dormouse Road and Park Village Road.

The mixed-use development would be comprised of approximately 525,000 square feet of commercial, office, theater and hotel uses and 242 residential dwelling units (both multi-family and single-family) on a 41.34-acre project site. The project would also construct associated site improvements (i.e. water, sewer, electrical, storm drains/detention basins, internal private drives, hardscape, site walls, and landscaping) and dedicate ROW for adjacent public roads. The second component of the project is comprised of 31 acres of public road and other infrastructure improvements to complete undeveloped segments of Camino Del Sur and Carmel Mountain Road, Circulation Element roads. Those improvements include the approximately 0.93-mile long Camino Del Sur extension which would be constructed from its current terminus south of SR-56 and Torrey Santa Fe Road to its intersection with its current terminus north of Dormouse Road and Park Village Road. The existing paved portion of Carmel Mountain Road would be realigned north of its current location and extended approximately 0.38 mile south from SR-56 ROW to its planned intersection with Camino Del Sur. Both public roads front the Merge 56 property and intersect at its southern project boundary.

Impacts of implementing elements of the project have been previously evaluated in three certified or adopted CEQA documents: Rhodes Crossing Environmental Impact Report (EIR; Project No. 3230; SCH No. 2002121089), Camino Ruiz North Roadway Mitigated Negative Declaration (LDR No. 40-0386; SCH No. 2000121031), and Camino Del Sur Project EIR (LDR No. 41-0248; SCH NO. 2001121109). These previous analyses are incorporated by reference into the project EIR; however, the current EIR is an entirely new, stand alone, project-level analysis of the Merge 56 Project.

Various state and federal permits would also be required from agencies other than the City and may include: an encroachment permit from California Department of Transportation; National Pollutant Discharge Elimination System permit compliance and General Construction Activity Permit from the Regional Water Quality Control Board and the State Water Resources Control Board; a Streambed Alteration Agreement (SAA) from the California Department of Fish and Wildlife (CDFW) Section 1602; a Federal Clean Water Act Section 404 Permit from the Army Corps of Engineers (Corps) for impacts to "Waters of the U.S.;" an Incidental Take Permit for vernal pools obtained through Section 7 of the Endangered Species Act (ESA); and a Federal Clean Water Act Section 401 Water Quality Certification from the California Regional Water Quality Control Board.

## **II. PROJECT OBJECTIVES**

The primary purposes, goals, and objectives of the project are:

- Develop a project that is consistent with the primary goals and objectives of the General Plan, Subarea Plan, Community Plan, applicable City regulations, and existing and planned surrounding land uses;
- Develop a mixed-use center wherein community-serving retail, office and residential uses are constructed instead of the standard commercial center, self-storage facility and medium high-density residential development envisioned in the Community Plan;
- Develop a project that places larger structures and more intensive uses along the freeway frontage and sets back the lowest density residential as far as possible from the freeway;
- Provide a range of residential housing types to meet the needs of existing and future City residents;
- Develop affordable housing units to satisfy the City's housing needs identified in the Torrey Highlands Subarea Plan and Housing Element of the General Plan;
- Provide commercial and office uses to create professional/administrative employment opportunities with convenient freeway access, within walking distance of residential housing, as well as retail, restaurant and entertainment services;
- Use sustainable architectural, landscaping and site design elements and materials to create a pedestrian-oriented community featuring active retail spaces, public gathering places, and landscaped areas linked by pedestrian pathways and bicycle lanes;
- Locate uses and their parking fields to enable and encourage 'park once' solutions to people visiting more than one retail or office space, as well as minimize the amount of empty parking spaces at low demand times by sharing parking amongst compatible users;
- Minimize surface parking fields and integrate parking into structures to minimize their visibility from public vantage points within the community and improve the streetscape appearance;
- Implement the Circulation Element connections in the Torrey Highlands Subarea Plan and Rancho Peñasquitos Community Plan, in accordance with the adopted Public Facilities Financing Plan;

- Reclassify two Circulation Element Roads in the project area to balance the environmental impacts of road construction with the traffic capacity and circulation needs of the communities;
- Convey traffic volumes anticipated at buildout of surrounding development areas at acceptable levels of service; and,
- Provide for new trail connections that offer linkages with existing and future trails recognized in the applicable planning documents.

### **III. DISCRETIONARY ACTIONS**

All discretionary approvals required from the City to implement the project have been subject to review and approval by the City's Planning Commission and City Council. The following discretionary actions are required for the Merge 56 project:

- A General Plan Amendment (GPA) to change the designated land uses in the General Plan from Commercial Employment, Retail and Services; Residential; and Parks, Open Space and Recreation to Multiple Use.
- A Community Plan Amendment (CPA) to change the land use designation of the project site in the Torrey Highlands Subarea Plan from Commercial Regional (CR) and Medium-High Density Residential (MHD) to Local Mixed-use Center (LMXU) South, to specify the planned land use intensity consistent with the project design (a maximum of 525,000 square feet of commercial type uses and 242 residential units), and to downgrade the classifications of on-site portions of Camino Del Sur and Carmel Mountain Road, Circulation Element roads in the Torrey Highlands Subarea Plan and Rancho Peñasquitos Community Plan.
- A Rezone to modify the entitled zoning of Commercial (CR-2-1) and Residential (RM-3-9) to Community Commercial (CC-3-5) and Residential Small Lot (RX 1-2).
- A Planned Development Permit (PDP) to amend PDP No. 53203 and to implement the Local Mixed-Use (LMXU) project on site and allowable deviations from the development regulations, in accordance with the Torrey Highlands Subarea Plan.
- A Site Development Permit (SDP) to amend SDP No. 53204, SDP No. 3278, and SDP No. 40-0386 for impacts to Environmentally Sensitive Lands (ESL) resources.
- A CUP is required for the construction and operation of the cinema/theater over 5,000 SF.
- A VTM to amend VTM No. 7938 is required to permit the re-subdivision of three lots to create 107 lots, consisting of 84 RX zoned lots, 12 CC zoned lots, seven open space lots, and four lots for private drives.

- A public ROW vacation for Camino Del Sur and Carmel Mountain Road to revise the ROW dedicated in VTM No. 7938 and to incorporate revisions attributable to the downgraded road classifications for both roads. A water easement vacation is also required.
- An amendment to the Public Facilities Financing Plans to revise the descriptions of the road improvements for Camino Del Sur and Carmel Mountain Road.

## **SECTION 2: ENVIRONMENTAL REVIEW PROCESS**

The Lead Agency approving the project and conducting environmental review under the California Environmental Quality Act (CEQA; California Public Resources Code §§21000, et seq.), and the Guidelines promulgated thereunder in California Code of Regulations, Title 14, §§15000 et seq. (CEQA Guidelines), hereinafter collectively, (CEQA) shall be the City. The City as Lead Agency shall be primarily responsible for carrying out the project. In compliance with §15082 of the CEQA Guidelines, the City published a Notice of Preparation (NOP) in July 2014, which began a 30-day period for comments on the appropriate scope of the project EIR. The City also conducted a public scoping meeting, in accordance with §21083.9 of CEQA, on August 6, 2014. The City received comment letters from the United States Fish and Wildlife Service (USFWS), Native American Heritage Commission, CDFW, California Department of Transportation (Caltrans), San Diego Archaeological Society, Rincon Band of Luiseño Indians, California Native Plant Society, and Viejas Tribal Government. Several emails from private citizens were also received in response to the NOP. A copy of the NOP, scoping meeting transcript, and public comment letters received on the NOP are provided in Appendix A of the Final EIR.

The Draft EIR for the project was then prepared and circulated for review and comment by the public, agencies, and organizations for a 45-day public review period that began on February 10, 2017 and concluded on March 27, 2017. A Notice of Completion of the Draft EIR was sent to the State Clearinghouse, and the Draft EIR was circulated to state agencies for review through the State Clearinghouse, Office of Planning and Research (SCH No. 2014071065). A Notice of Availability of the Draft EIR was filed with the County Clerk. Comments on the Draft EIR were received from the USFWS/CDFW (jointly), Caltrans, Native American Heritage Commission, San Diego Association of Governments (SANDAG), San Diego County Archaeological Society, Rincon Band of Luiseño Indians, Poway Unified School District, Golden State Environmental Justice Alliance, California Native Plant Society/Preserve Wild Santee/Environmental Center of San Diego/San Diego Audubon Society/California Chaparral Institute/Sierra Club (jointly), Environmental Center of San Diego, Los Peñasquitos Reserve Citizen Advisory Committee, Lozeau Drury, LLP, Rhodes Crossing (Keith Rhodes) and several individuals. After the close of the public review period, the City provided in the Final EIR responses in writing to all comments received on the Draft EIR.

The Final EIR has been prepared in accordance with CEQA and the State CEQA Guidelines. The City, acting as the Lead Agency, has reviewed and edited as necessary the submitted drafts and certified that the Final EIR reflects its own independent judgment and analysis under Guideline §15090(a)(3) and CEQA Statute §21082.1(a)-(c).

The Final EIR addresses the environmental effects associated with implementation of the project. The Final EIR is intended to serve as an informational document for public agency decision-makers and

the general public regarding the objectives and components of the project. The Final EIR addressed the potential significant adverse environmental impacts associated with the project, and identifies feasible mitigation measures and alternatives that may be adopted to reduce or eliminate these impacts. The Final EIR is incorporated by reference into this CEQA Findings document.

The Final EIR is the primary reference document for the formulation and implementation of a mitigation monitoring program for the project. Environmental impacts cannot always be mitigated to a level that is considered less than significant. In accordance with CEQA, if a Lead Agency approves a project that has significant unavoidable impacts that cannot be mitigated to a level below significance, the agency must state in writing the specific reasons and overriding considerations for approving the project based on the final CEQA documents and any other information in the public record for the project. (CEQA Guidelines §15093).

## **I. Record of Proceedings**

For purposes of CEQA and these Findings and Statement of Overriding Considerations (Statement), the Record of Proceedings for the project consists of the following documents and other evidence, at a minimum:

- The Notice of Preparation (NOP) and all other public notices issued by the City in conjunction with the project;
- All responses to the NOP received by the City;
- The Draft and Final EIRs;
- All written comments submitted by agencies or members of the public during the public review comment period on the Draft EIR;
- All responses to the written comments included in the Final EIR;
- The reports and technical memoranda included or referenced in any responses to comments in the Final EIR;
- All written and oral public testimony presented during a noticed public hearing for the project at which such testimony was taken;
- The Mitigation Monitoring and Reporting Program;
- All documents, studies, EIRs, or other materials incorporated by reference in, or otherwise relied upon during the preparation of the Draft EIR and the Final EIR;
- Matters of common knowledge to the City, including, but not limited to, federal, state, and local laws and regulations;
- Any documents expressly cited in these Findings and Statement; and
- Any other relevant materials required to be in the record of proceedings by Public Resources Code Section 21167.6(e)

## **II. Custodian and Location of Records**

The documents and other materials which constitute the administrative record for the City's actions related to the project are located at the City of San Diego, Development Services Center, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. The City Development Services Center is the custodian of



the administrative record for the project. Copies of these documents, which constitute the Record of Proceedings, are and at all relevant times have been and will be available upon request at the offices of the City Development Services Center. This information is provided in compliance with Public Resources Code §21081.6(a)(2) and Guidelines §15091(e).

### **SECTION 3: SUMMARY OF IMPACTS**

The Final EIR Sections 5.0, 6.0 and 7.0 demonstrate, and the City hereby finds, based on the Final EIR and the Record of Proceedings, that the project will have **less than significant impacts** and require no mitigation measures with respect to the following issues:

- Agriculture and Forestry Resources
- Air Quality
- Biological Resources (other than as addressed in Section 4(II) below)
- Energy
- Geologic Conditions
- Greenhouse Gas Emissions
- Health and Safety
- Historic Resources (Built Environment)
- Hydrology/Water Quality
- Land Use (other than as addressed in Section 4(II) below)
- Noise
- Mineral Resources
- Public Utilities
- Public Services and Facilities
- Transportation/Circulation (Direct)
- Visual Effects/Neighborhood Character (other than Landform Alteration)

Sections 5.0 and 6.0 of the Final EIR demonstrate, and Section 4(II) of these Findings includes the corresponding findings, that potentially **significant impacts of the project will be mitigated** to below a level of significance with respect to the following issues:

- Land Use (MSCP)
- Transportation/Circulation (Cumulative other than as addressed in Section 4.III.A below)
- Biological Resources
- Historical Resources (Archaeology)
- Paleontological Resources

Sections 5.0 and 6.0 of the Final EIR demonstrates, and Sections (4)III and (IV) of these Findings include the corresponding findings, that **no feasible mitigation measures** are available to the project to reduce impacts to below a level of significance for the following issues:

- Transportation/Circulation (Cumulative other than as addressed in Section 4.II.B below)
- Visual Effects/Neighborhood Character (Landform Alteration)

## SECTION 4: FINDINGS OF FACT

### I. INTRODUCTION

The CEQA Guidelines require that no public agency shall approve or carry out a project which identifies one or more significant environmental impacts of a project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The findings shall be supported by substantial evidence in the record. The possible findings are:

1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

CEQA requires that the Lead Agency adopt mitigation measures or alternatives where feasible to avoid or mitigate significant environmental impacts that would otherwise occur with the implementation of the project. Project mitigation or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with another agency (Guidelines §15091(a)(b)). For those significant impacts that cannot be mitigated to a less than significant level, the Lead Agency is required to find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment (CEQA §21081(b) and Guidelines §15093). If such findings can be made, the Guidelines state in §15093 "the adverse environmental effects may be considered acceptable." CEQA also requires that findings made pursuant to §15091 be supported by substantial evidence in the record (State CEQA Guidelines, §15091(b)). Under CEQA, substantial evidence means enough relevant information has been provided (reasonable inferences from this information may be made) to support a conclusion, even though other conclusions might also be reached. Substantial evidence includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts (State CEQA Guidelines, §15384).

The findings reported in the following pages incorporate the facts and discussions in the Final EIR for the project as fully set forth therein. The CEQA Guidelines §15091 do not require findings to address environmental impacts that an EIR identifies as not significant or less than significant without mitigation. Section 3 above identifies those areas and includes the finding that the respective impacts are either not significant or less than significant without mitigation. The findings in subsections II, III and IV below are focused on the potentially significant effects of the project that can be reduced to a less than significant level with mitigation and those potentially significant effects of the project that would remain significant and unavoidable. Subsection V below includes findings regarding the reasonable range of alternatives analyzed in the Final EIR. For each of the significant impacts associated with the project, the following sections are provided:

*Description of Potentially Significant Impacts:* A description of the potentially significant environmental impacts identified in the Final EIR. If unavoidable, impact is so noted.

*Facts in Support of the Finding:* Identified feasible mitigation measures or actions that are required as part of the project to mitigate the project's impacts plus a description of the evidence that demonstrates that the impacts will be reduced to less than significant levels. If mitigation is infeasible, the reasons supporting the finding that the rejected mitigation is infeasible.

*Reference:* A notation on the specific section in the Final EIR which includes the factual evidence and discussion of the identified significant impact.

Having received, reviewed, and considered the Final EIR for the Merge 56, Project No. 360009, State Clearinghouse No. 2014071065 (Final EIR), as well as all other information in the record of proceedings on this matter, the following Findings are made, and Statement is adopted by the City in its capacity as the CEQA Lead Agency. These Findings and Statement set forth the environmental basis for current and subsequent discretionary actions to be undertaken by the City and responsible agencies for the implementation of the project.

## **II. FINDINGS REGARDING POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS FOUND TO BE LESS THAN SIGNIFICANT AFTER MITIGATION**

The City, having independently reviewed and considered the information contained in the Final EIR and the Record of Proceedings pursuant to Public Resource Code §21081(a)(1) and State CEQA Guidelines §15091(a)(1), adopts the following findings regarding the significant effects of the project described in this Subsection II, as follows:

*Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant effects on the environment as identified in the Final EIR (Project No. 360009/SCH No. 2014071065) as described below:*

### **A. Land Use (MSCP)**

1. *Description of Potentially Significant Impacts:* The construction of Camino Del Sur on 2.2 acres of the MHPA would be consistent with the MSCP Subarea Plan, including Section 1.4.3 Land Use Adjacency Guidelines, as well as Section 1.4.1 Compatible Land Uses, Section 1.5.2 General Management Directives, and Section 1.4.2 General Planning Policies and Design Guidelines which includes Roads and Utilities Construction and Maintenance Policies, Fencing, Lighting and Signage Policies, and Materials Storage Policies . Section 5.1 provides an analysis of the project's consistency with the MSCP Subarea Plan as it relates to the potentially significant land use policy implications of locating the extension of Camino del Sur within and adjacent to the MHPA and the remainder of the project within proximity to the MHPA. Indirect impacts associated with the construction and operation of the road and the overall project could result in land use adjacency impacts due to the proximity to preserved sensitive biological resources protected by the MSCP Subarea Plan,

resulting in a potentially significant land use policy conflict with the MHPA requiring mitigation.

*Facts in Support of the Finding:* As described in the Final EIR, Camino Del Sur is a Circulation Element road and is considered a compatible land use within the MHPA under the policies of the MSCP Subarea Plan and less than significant impacts would occur; any direct biological resource impacts to the habitat in the preserve would be mitigated to below significance as disclosed in Section II.C.1 of these Findings. Section 5.1 explains how the project would comply with the City's Land Use Adjacency Guidelines related to public access, invasive plant species, and brush management, and no mitigation would be required. However, indirect edge effects would lead to potential land use adjacency impacts requiring mitigation related to grading/land development, drainage and toxics, lighting, and noise effects. These impacts have the potential to significantly degrade the habitat quality in the short-term and long-term due to its proximity to road development. Mitigation Measures Bio-1 and Bio-3, in Section 5.3, in addition to mitigating potentially significant biological resource impacts, would also mitigate direct and indirect land use impacts associated with proposed development adjacent to the MHPA by requiring the project to retain a qualified biologist to participate, monitor, supervise, educate about and document relevant activities in the pre, during and post construction aspects of the project, and establishing compensatory mitigation requirements consistent with the MSCP Subarea Plan for project impacts to upland vegetation communities in the MHPA. Mitigation Measure Lu-1 requires compliance with MSCP Land Use Adjacency Guidelines, and imposes performance criteria and other requirements, associated with grading/land development/MHPA boundaries, drainage, toxics/project staging areas/equipment storage, lighting, as well as noise/biological monitoring requirements for the coastal California gnatcatcher. Delineating the MHPA boundaries on the grading plans would ensure that all grading is confined to the approved development footprint. Installation of fencing and signage along the MHPA boundaries and San Diego National Wildlife Refuge would deter access into the preserve areas. The use of structural and non-structural features to control drainage would prevent erosion/sedimentation of downstream areas in the MHPA. Placing all potential sources of contamination within the limits of grading and monitoring those sources would prevent its intrusion into the MHPA. Controlling lighting would prevent unnecessary exposure of animals to night lighting which can hamper their survival. Pre-construction surveys and noise monitoring during the California gnatcatcher breeding season would minimize any impacts on the species' breeding activities and success. These measures address the potentially significant impacts disclosed in Section 5.1 with respect to the project's potential conflicts with the MSCP Subarea Plan and other local, regional or state habitat conservation plans.

The City finds that with implementation of Mitigation Measures Bio-1, Bio-3, and Lu-1, potentially significant land use adjacency impacts associated with potential project conflicts with the MSCP Subarea Plan and other local, regional or state habitat conservation plans will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.1-15 through 5.1-27 and 3.3-28 through 5.3-5.3-42

## B. Transportation/Circulation

1. *Description of Potentially Significant Impacts:* Based on the City significance criteria, the project would contribute toward increased traffic delays and result in a significant cumulative impact at the intersection of Carmel Mountain Road/Black Mountain Road under Horizon Year 2035 conditions. The intersection is expected to operate at level of service (LOS) F in the AM peak hour without the project, and with the project those unacceptable conditions would worsen as delay would increase by more than 1.0 second, resulting in an exceedance of the City's significance threshold (noted in Table 5.2-5).

*Facts in Support of the Findings:* The Final EIR identifies Mitigation Measure Tra-3 which calls for restriping to provide for an additional northbound left-turn lane at the intersection of Carmel Mountain Road/Black Mountain Road within the existing curb-to-curb width and restripe the northbound receiving lanes and red curb by an additional 160 feet. Implementation of this measure would reduce intersection delays by 10.8 seconds in the AM peak hour, which achieves a reduction from LOS F under Horizon Year 2035 conditions with and without the project, to LOS E with the mitigation in place.

The City finds that with implementation of Mitigation Measure Tra-3, the project's potentially significant cumulative impact to the Carmel Mountain Road/Black Mountain Road intersection in Horizon Year 2035 will be mitigated to less than significant levels.

*Reference:* Final EIR, pages 5.2-16 through 5.2-32

## C. Biological Resources

1. *Description of Potentially Significant Impacts:* As described in Section 5.3.2, the project would result in potentially significant direct, substantial and adverse impacts to candidate, sensitive, or special status species as defined in the City's CEQA significance thresholds, either directly, or through habitat modifications. Potentially significant impacts include direct impacts to sensitive vegetation communities, sensitive plant species, and sensitive wildlife species.

Sensitive vegetation communities that would be directly impacted include vernal pools, road pools, southern willow scrub, mule fat scrub, freshwater marsh, scrub oak chaparral, Diegan coastal sage scrub (including disturbed), Diegan coastal sage scrub-southern mixed chaparral ecotone, southern mixed chaparral, chamise chaparral (including disturbed), and non-native grassland. These impacts would be potentially significant because these communities are wetlands or Tier 1 through Tier IIIB habitats, as defined in the City's Biology Guidelines.

The project would have direct impacts to several sensitive plant species including Nuttall's scrub oak, summer holly, and spine shrub due to the number of individuals impacted and/or higher levels of sensitivity.

The project would result in direct impacts to several sensitive wildlife species, including San Diego fairy shrimp, coastal California gnatcatcher and its habitat inside of the MHPA, San Diego black-tailed jackrabbit, silvery legless lizard, Coronado skink, Bell's sage sparrow, California horned lark, Dulzura pocket mouse, and the northwestern San Diego pocket mouse. Direct impacts to non-native grassland would result in a loss of raptor foraging habitat outside of the MHPA, resulting in a potentially significant impact to raptors. Indirect impacts to sensitive species from grading/land development, drainage and toxics, lighting, and noise are addressed in Section II.A.1 of these findings.

*Facts in Support of the Finding:* Mitigation Measures Bio-1 through Bio-9 would reduce the project's direct and indirect impacts to sensitive vegetation communities and sensitive plant and wildlife species to below a level of significance. Mitigation Measure Bio-1 contains measures to be implemented for biological resource protection through the retention of a qualified biologist to participate, monitor, supervise, educate about and document relevant activities in the pre, during and post construction aspects of the project. Mitigation Measure Bio-2 imposes mitigation for impacts to sensitive natural communities. Bio-2 requires compensatory mitigation for impacts to vernal pools and road pools via off-site creation of vernal pool habitat at a 3:1 ratio and a five-year maintenance and monitoring period. Final compensatory mitigation for impacts to fairy shrimp would be determined through permits/authorizations to be issued by the Corps, USFWS, and City prior to issuance of project grading permits. Bio-2 also requires mitigation for impacts to 0.5 acre of wetland/riparian habitat (other than vernal pools) at a 3:1 ratio through off-site creation of wetland habitat and a five-year maintenance and monitoring period. Mitigation Measure Bio-3, would reduce potentially significant adverse impacts to 61.2 acres of sensitive upland vegetation communities and Nuttall's scrub oak, by requiring compensatory mitigation at a 1:1 ratio for Tier I impacts, at a 1:1 or 2:1 ratio for impacts to Tier II habitats, and at a 0.5:1 or 1:1 ratio for impacts to Tier IIIA and Tier IIIB habitats at appropriate locations consistent with the City's Biology Guidelines identified in the mitigation measure and the Final EIR. Mitigation Measure Bio-4 includes mitigation for direct impacts to San Diego fairy shrimp and designated critical habitat for that species. Compensatory mitigation for impacts to the San Diego fairy shrimp would be met through vernal pool habitat creation in accordance with the off-site mitigation ratios and criteria identified in Bio-2. Bio-4 contains additional performance standards, requirements and long term management and monitoring the project must implement to mitigate the project's potentially significant, adverse impacts to San Diego fairy shrimp and its habitat. Additional measures to protect San Diego fairy shrimp and its habitat in the off-site vernal pool preserves adjacent to the project are included in Mitigation Measure Bio-8 and Mitigation Measure Bio-9 (discussed in Section II.C.3). Mitigation Measure Bio-5 requires acquisition and preservation of Diegan coastal sage scrub habitat in accordance with the mitigation ratio and standards identified in Mitigation Measure Bio-3 to reduce potential

direct impacts to coastal California gnatcatcher. Mitigation Measure Bio-5 also incorporates Mitigation Measure Lu-1's performance standards and requirements to address potential indirect impacts to the coastal California gnatcatcher from construction noise. Mitigation Measure Bio-6 identifies mitigation for potential direct impacts to the San Diego black-tailed jackrabbit, silvery legless lizard, Coronado skink, Bell's sage sparrow, California horned lark, Dulzura pocket mouse, and northwestern San Diego pocket mouse. Mitigation Measure Bio-6 incorporates the protection for these species during construction, as required by Mitigation Measure Bio-1, and acquisition and preservation of habitat at the ratios and in the manner specified in Mitigation Measure Bio-3. Mitigation Measure Bio-7 identifies mitigation for impacts to raptor foraging habitat, which would be mitigated through acquisition and preservation of non-native grassland in accordance with the criteria established by Mitigation Measure Bio-3. With implementation of Mitigation Measures Bio-1 through Bio-7, as well as Mitigation Measures Bio-8 and Bio-9 that address the project's potential to have significant impacts on jurisdictional areas, the project would not have substantial adverse impacts, either directly or through habitat modifications, to any species identified as a candidate, sensitive or special status species in the MSCP or other local or regional plans, policies or regulations, or by the CDFW or USFWS.

The City finds that with implementation of Mitigation Measures Bio-1, Bio-2, Bio-3, Bio-4, Bio-5, Bio-6, Bio-7, Bio-8 and Bio-9, any potentially substantial adverse project impacts, either directly or through habitat modifications, to any species identified as a candidate, sensitive or special status species in the MSCP or other local or regional plans, policies or regulations, or by the CDFW or USFWS, will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.3-28 through 5.3-44

2. *Description of Potentially Significant Impacts:* As described in Section 5.3.2, including Tables 5.3-7 and 5.3-8, the project would result in direct impacts on Tier I, Tier II, Tier IIIA, and Tier IIIB habitats as identified in the Biology Guidelines of the LDC or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS. Removal of 31.4 acres of sensitive uplands as part of the mixed-use development and 25.6 acres of sensitive uplands as part of the public roads would require mitigation to compensate for the project's impacts, in accordance with the Biology Guidelines and MSCP Subarea Plan.

*Facts in Support of the Finding:* Impacts to sensitive vegetation communities identified in the Biology Guidelines of the LDC or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS and MSCP Subarea Plan would be mitigated through implementation of Mitigation Measures Bio-1, Bio-2, and Bio-3 (discussed in Sections II.C.1 and II.C.2 of these findings). Substitution of the East Elliot land acquisition for the former mitigation option of acquiring credits from the Marron Valley Mitigation Bank, as stated in revised language for Mitigation Measure Bio-3, would

satisfy the project's upland mitigation requirements and comply with the City's Biology Guidelines with respect to impacts to Tier I, Tier II, Tier IIIA, and Tier IIIB habitats as all the mitigation sites referenced in the revised Mitigation Measure Bio-1 are viable sources of compensatory mitigation. Implementation of Mitigation Measures Bio-1, Bio-2, and Bio-3 would reduce impacts to below a level of significance as those measures require the project to retain a qualified biologist to participate, monitor, supervise, educate about and document relevant activities in the pre, during and post construction aspects of the project, establish compensatory mitigation requirements for the different tiers of habitat and imposing performance standards for the mitigation that addresses project impacts to the different vegetation communities.

The City finds that with implementation of Mitigation Measures Bio-1, Bio-2, and Bio-3, any potentially substantial adverse, direct project impacts on Tier I, Tier II, Tier IIIA, and Tier IIIB habitats as identified in the Biology Guidelines of the LDC or other sensitive natural community identified in local or regional plans, policies, regulations or by the CDFW or USFWS will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.3-28 through 5.3-44

3. *Description of Potentially Significant Impacts.* As described in Section 5.3.3, the project would result in potentially substantial adverse impacts on Waters of the United States, Waters of the State, and City Wetlands through direct removal, filling, hydrological interruption, or other means. The project would qualify for ESL Regulations Deviations for these impacts based on criteria outlined in the City Biology Guidelines. The public roads qualify for the deviations as an Essential Public Project (EPP), while the mixed-use development is the Biologically Superior Option (BSO) based on the criteria in the City Biology Guidelines. Potential indirect impacts could occur to vernal pools and their watersheds in the adjacent vernal pool preserves outside of the impact footprint.

*Facts in Support of the Finding:* Substantial adverse impacts to wetlands (including, but not limited to, marsh, vernal pools, riparian areas, etc.) through direct removal, filling, hydrological interruption, or other means would be mitigated as described below and in Section 5.3. Mitigation for project impacts to jurisdictional streambeds on the mixed-use development site were previously addressed in the Corps, CDFW, and Regional Water Quality Control Board permits and the Biological Opinion for the Rhodes Crossing Project and would occur in accordance with the Rhodes Crossing Project Mitigation Plan (Appendix C) in the vernal pool preserves adjacent to Carmel Mountain Road. Mitigation Measures Bio-2 and Bio-8, along with continued compliance with the prior permitting and the Rhodes Crossing Project Mitigation Plan described in the Final EIR, would mitigate the project's potentially substantial, adverse impacts on wetlands through direct removal, filling, hydrological interruption, or other means. Mitigation Measure Bio-2, which establishes mitigation ratios and performance standards for potential vernal pool/road pool impacts, is discussed in Sections III.B.1 and III.B.2 of these findings. Mitigation



Measure Bio-8 identifies mitigation requirements for the project's impacts to non-wetland, federal and state jurisdictional streambeds associated with Camino del Sur (0.05 acre at a 1:1 ratio) and discusses how the mitigation required for the project has already been met at the El Cuervo Norte Wetland Mitigation Site in Los Peñasquitos Canyon Preserve (a total of 0.08 acre of creation credits and 0.01 acre of enhancement credit). Mitigation Measure Bio-8 also contains a requirement for a pre-construction meeting with Mitigation Monitoring Coordination and the submittal of written documentation demonstrating implementation of the following: Compliance with the Corps Section 404 permit; compliance with the Regional Water Quality Control Board Section 401 Water Quality certification; and compliance with the CDFW Section 1601-1603 Streambed Alteration Agreement. Mitigation Measure Bio-9 imposes construction monitoring requirements to protect the off-site vernal pool preserve during and after the construction of the project's public roads.

The City finds that with implementation of Mitigation Measures Bio-2, Bio-8, Bio-9 and the Rhodes Crossing Project Mitigation Plan, substantial, adverse, direct project impacts on wetlands (including, but not limited to, marsh, vernal pools, riparian areas, etc.) through direct removal, filling, hydrological interruption, or other means will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.3-44 through 5.3-54

4. *Description of Potentially Significant Impacts:* As described in Section 5.3.5, the project would result in impacts to sensitive vegetation communities within the MHPA, which would be unavoidable. Because the impacts would be caused by Camino Del Sur, a Circulation Element Road, the MSCP allows for those impacts as a result of a compatible land use within MHPA provided the proposal complies with the criteria evaluated in Section 5.3. As disclosed therein, project impacts within the MHPA would not conflict with the MSCP or its policies and the project would be consistent with the Area Specific Management Directives of the MSCP. Project impacts to sensitive habitat in the MHPA, as evaluated in Section 5.3, would still be considered significant and mitigation would be required.

*Facts in Support of the Finding:* Mitigation Measures Bio-1 through Bio-9, which are summarized in Section 5.3 and Sections II.C.1 through II.C.3 of these findings, would be required to mitigate a potential conflict with the provisions of an adopted Habitat HCP, NCCP, or other approved local, regional, or State HCP, either within the MSCP plan area or in the surrounding region.

The City finds that with implementation of Mitigation Measures Bio-1, Bio-2, Bio-3, Bio-4, Bio-5, Bio-6, Bio-7, Bio-8, and Bio-9, the project's potential to conflict with the provisions of an adopted Habitat HCP, NCCP, or other approved local, regional, or State HCP, either within the MSCP plan area or in the surrounding region will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.3-54 through 5.3-56

5. *Description of Potentially Significant Impacts:* As described in Section 5.3.6 R and Section III.A.1 of these findings, the project would introduce a land use within an area adjacent to the MHPA that would result in potential adverse edge effects related to grading/land development, drainage and toxics, lighting and noise. These impacts would be potentially significant and mitigation would be required.

*Facts in Support of the Finding:* As disclosed in Section III.A.1 of these findings, Mitigation Measure Lu-1 requires compliance with MSCP Land Use Adjacency Guidelines. That measure includes requirements that address grading/land development/MHPA boundaries, drainage, toxics/project staging areas/equipment storage, lighting, and noise impacts so as to mitigate the potential adverse edge effects to the MHPA resulting from introduction of the project land uses.

The City finds that with implementation of Mitigation Measure Lu-1 the project's potential to have the above described adverse edge effects due to the introduction of land uses within an area adjacent to the MHPA will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.3-56 through 5.3-58

#### D. Historical Resources

1. *Description of Potentially Significant Impacts:* The analysis contained in Section 5.4.2 demonstrates that neither the mixed-use development nor the public roads and related trail connections would result in the alteration or destruction of any prehistoric or historic buildings, structures, objects, or sites. However, there is a potential for occurrence of unknown subsurface archaeological resources associated with the mixed-use development, and the potential for unknown subsurface historic resources in the vicinity of one recorded and documented site near the Camino Del Sur extension and the eastern trail connection. This potential for impacts to unknown archaeological and/or historical resources is a potentially significant impact and mitigation is required.

*Facts in Support of the Finding:* Mitigation Measure Hist-1 would be required to mitigate the impacts of the project potentially resulting in an alteration, including the adverse physical or aesthetic effects and/or destruction of an unknown, subsurface prehistoric or historic building (including an architecturally significant building), structure, object or site. Mitigation Measure Hist-1 establishes performance standards and requirements with respect to the potential discovery of such an unknown, subsurface resource. The measures address matters such as the retention of qualified monitors prior to permit issuance, involvement of monitors in the pre-construction process, participation and authority of monitors during construction and reporting requirements post construction. The measure also contains requirements that would apply in the event of the discovery of human remains or the occurrence of night and/or weekend work.

The City finds that with implementation of Mitigation Measure Hist-1, the project's potential to result in an alteration, including the adverse physical or aesthetic effects

and/or destruction of a prehistoric or historic building (including an architecturally significant building), structure, object or site will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.4-4 through 5.4-14

2. *Description of Potentially Significant Impacts:* The analysis contained in Section 5.4.2 demonstrates that neither the mixed-use development nor the public roads and related trail connections would result in any impact to existing religious or sacred sites/uses within the potential project impact area. However, there is a potential for occurrence of unknown subsurface resources. As a result of this potential for unknown subsurface, existing religious or sacred sites/uses, the project would have a potentially significant impact, requiring mitigation.

*Facts in Support of the Finding:* As disclosed in Section III.C.1 of these findings, Mitigation Measure Hist-1 establishes protocols for project archaeological monitoring and reporting during construction. Those same measures, as they require the retention and involvement of appropriately qualified experts, would be required to mitigate the project's potential to impact existing, subsurface religious or sacred sites/uses within the project's potential impact area.

The City finds that with implementation of Mitigation Measure Hist-1, the project's potential to result in any impact to previously unidentified, subsurface, existing religious or sacred uses within the potential impact area will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.4-4 through 5.4-14

3. *Description of Potentially Significant Impacts:* The analysis contained in Section 5.4.2 demonstrates that neither the mixed use development nor the public roads and related trail connections would result in the disturbance of human remains, including those interred outside of formal cemeteries. However, there is a potential for occurrence of unknown subsurface resources. This potential for unknown subsurface human remains means the project would have a potentially significant impact, requiring mitigation.

*Facts in Support of the Finding* As disclosed in Section II.D.1 of these Findings, Mitigation Measure Hist-1 establishes protocols for project archaeological monitoring and reporting during construction. Those same measures, as they require the retention and involvement of appropriately qualified experts including a Native American monitor, would be required to mitigate potential project impacts resulting in the disturbance of any human remains, including those interred outside of formal cemeteries.

The City finds that with implementation of Mitigation Measure Hist-1, the potential for adverse effects on previously unidentified human remains, including those interred outside of formal cemeteries, will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.4-4 through 5.4-14

E. Paleontological Resources

1. *Description of Potentially Significant Impacts:* The analysis contained in Section 5.5.1 demonstrates that the project area contains three formations (Mission Valley, Stadium, and Friars formations) that have been assigned a designation of high paleontological resources sensitivity. Project implementation would require in excess of the threshold of 1,000 cubic yards of excavation to a depth of 10 feet or more within those formations with "High" sensitivity. Thus, the project would have a potentially significant impact on paleontological resources located in formations with "High" sensitivity that require mitigation.

*Facts in Support of the Findings:* Mitigation Measure Paleo-1 would be required to mitigate potential project impacts to paleontological resources located within formations with "High" paleontological sensitivity. The measure would ensure paleontological resources uncovered during grading activities are properly evaluated, and if appropriate, removed and subjected to laboratory procedures in accordance with the City's Paleontological Resource Guidelines. Specifically, Mitigation Measure Paleo-1 establishes protocols for project paleontological monitoring, including requirements prior to permit issuance, prior to the start of construction, and during construction. Mitigation Measure Paleo-1 also contains requirements associated with night/weekend work and post construction reporting requirements.

The City finds that with implementation of Mitigation Measure Paleo-1, the potential for adverse project impacts to paleontological resources in formations with "High" sensitivity will be reduced to a less than significant level.

*Reference:* Final EIR, pages 5.5-3 through 5.5-8

2. *Description of Potentially Significant Impacts:* As disclosed in Section 5.5.1, the project area includes the Lindavista Formation, which has been assigned a moderate paleontological resource sensitivity. Project implementation would require in excess of 2,000 cubic yards of excavation to a depth greater than 10 feet within that formation with "Moderate" sensitivity. Therefore, the project would have a potentially significant impact on paleontological resources with "Moderate" sensitivity that require mitigation.

*Facts in Support of the Finding:* Mitigation Measure Paleo-1 would be required to mitigate potential project impacts to paleontological resources located within formations with "Moderate" paleontological sensitivity. Mitigation Measure Paleo-1 would ensure paleontological resources uncovered during grading activities are properly evaluated, and if appropriate, removed and subjected to laboratory procedures in accordance with the City's Paleontological Resource Guidelines. Specifically, Mitigation Measure Paleo-1 establishes protocols for project paleontological monitoring, including requirements prior to permit issuance, prior to the start of construction, and during construction. Mitigation Measure Paleo-1 also contains requirements associated with night/weekend work and post construction reporting requirements.

The City finds that with implementation of Mitigation Measure Paleo-1, the potential for adverse project impacts to paleontological resources in areas with "Moderate" sensitivity will be reduced to a less than significant level.

*Reference: Final EIR, pages 5.5-3 through 5.5-8*

### **III. FINDINGS REGARDING IMPACTS THAT ARE FOUND TO BE SIGNIFICANT AND UNAVOIDABLE**

The following environmental impacts to Transportation/Circulation and Visual Effects/Neighborhood Character are significant and unavoidable.

The City, having independently reviewed and considered the information contained in the Final EIR and the Record of Proceedings pursuant to Public Resource Code §21081(a)(2) and §21081(a)(3), and State CEQA Guidelines §15091(a)(2) and §15091(a)(3), finds that one or both of the following apply to the impacts more particularly described below:

*Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.*

*Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR (Project No. 360009/SCH No. 2014071065) as described below.*

#### A. Transportation/Circulation

1. *Description of Significant and Unavoidable Impacts:* As described in Section 5.2.2, the project would not result in any direct, significant adverse transportation/circulation impacts with respect to applicable intersections and street segments. However, the project would result in significant, cumulative and unavoidable traffic-related impacts:

##### Intersections

- Camino Del Sur/SR-56 Westbound Ramps (PM)
- Camino Del Sur/SR-56 Eastbound Ramps (PM)
- Black Mountain Road/SR-56 Westbound Ramps (AM)
- Black Mountain Road/SR-56 Eastbound Ramps (AM)
- Black Mountain Road/Park Village Road (AM/PM)

##### Street Segments

- Black Mountain Road from SR-56 Eastbound Ramps to Park Village Road
- Black Mountain Road from Park Village Road to Mercy Road

*Facts in Support of the Findings:* Mitigation Measures Tra-1, Tra-2, and Tra-4 through Tra-6 identify potential mitigation for significant cumulative impacts to the above referenced intersections along Black Mountain Road and Camino Del Sur, while Mitigation Measures Tra-7 and Tra-8 provide potential mitigation for significant cumulative impacts to the above referenced street segments of Black Mountain Road. Mitigation Measures Tra-1 and Tra-2 require payment of Facilities Benefit Assessment (FBA) fees toward the construction of *Torrey Highlands PFFP Project No. T-1.3* to provide improvements to the westbound and eastbound loop ramps at the Camino Del Sur/SR-56 interchange. Mitigation Measures Tra-4, Tra-5, Tra-6, Tra-7, and Tra-8 require fair share contributions toward the unfunded portion of *Rancho Peñasquitos PFFP Project No. T-2D* (corresponding to *Black Mountain Ranch PFFP Project No. T-57*, *Pacific Highlands Ranch PFFP Project No. T-11.1*) to widen Black Mountain Road from Twin Trails Drive to the Community Plan Boundary to its ultimate classification as a 6-Lane Primary Arterial. For Mitigation Measures Tra-4 and Tra-5, the improvement would also include the restriping of the temporary striping on Black Mountain Road overpass at SR-56 to provide three thru lanes in the northbound direction.

The Final EIR identifies that the improvements cited above, if timely implemented, would be sufficient to reduce the cumulative project impacts to a less than significant level. Thus, the Final EIR imposes the mitigation measures that obligate the project to cause implementation of or make fair share contributions toward the required improvements. However, certain factors preclude the City from being able to make a finding that imposition of the mitigation measures would reduce the project's cumulatively considerable impacts at the referenced intersections and street segments to less than significant levels.

Mitigation Measures Tra-1 and Tra-2 involve payment of FBA fees toward intersection improvements to the Camino Del Sur eastbound and westbound loop ramps with SR-56. However, timely completion of the Camino Del Sur/SR-56 ramp intersection improvements is outside of the City's control due to the fact that it is linked to the future widening of SR-56 by others. Further, the San Diego Association of Governments (SANDAG) Regional Transportation Plan (RTP) does not contemplate completion of the SR-56 widening, including the ramp intersection improvements required in Tra-1 and Tra-2, until Year 2040 (after the cumulative project impact would occur in Year 2035). Although the project is obligated to make its fair share payments to reduce its cumulative impacts to a less than significant level, neither the City nor the Owner/Permittee can assure the completion of these improvements within the requisite time frame to reduce project impacts to a less than significant level at the time the impacts are expected to occur. No other feasible mitigation measures are available that would avoid or further reduce the above referenced transportation/circulation impacts to a less than significant level. Therefore, the City accordingly finds that the project's cumulative impacts at those intersections will remain significant and unavoidable, despite imposition of all feasible mitigation.

Mitigation Measures Tra-4, Tra-5, Tra-6, Tra-7 and Tra-8 address improvements to intersections and street segments as part of the potential widening of Black Mountain Road to six lanes. Even with the project's fair share funding contribution required by the

above referenced mitigation measures, only partial funding has been identified for the widening of Black Mountain Road because the estimated costs in the Rancho Peñasquitos PFFP (Fiscal Year 2014) for the road widening do not include the cost of right-of-way acquisition. In addition, according to the PFFP approximately 80% of the funds for the widening improvements (identified as *Project No. T-2D* corresponding to *Black Mountain Ranch PFFP Project No. T-57*, *Pacific Highlands Ranch PFFP Project No. T-11.1*) are linked to undefined sources; thus, even with the project's fair share contribution of 37.4% of the unfunded cost, the required improvements would not have sufficient funding to allow the implementation of the required improvements. Beyond the funding uncertainty, the Black Mountain Ranch project applicant has initiated a Community Plan Amendment (CPA) to the Rancho Peñasquitos Community Plan to downgrade the roadway classification of Black Mountain Road from six lanes to four lanes. The reclassification is currently under review by the City. If the proposed CPA is approved, the planned road widening identified in Tra-4 through Tra-8 would not be implemented as the road would remain at four lanes as it exists today.

As demonstrated above and in the Final EIR, the project is obligated to make its fair share payments to improvements that would reduce its cumulative impacts to a less than significant level. No other feasible mitigation measures are available that would avoid or further reduce the above referenced transportation/circulation impacts to a less than significant level. As funding, timing, and policy uncertainty exist regarding the implementation of the requisite improvements to Black Mountain Road specified in Tra-4, Tra-5, Tra-6, Tra-7 and Tra-8, the City hereby finds that specific economic, legal, social, technological, or other considerations, make infeasible those mitigation measures. Therefore, the City finds that the project's cumulative impacts will remain significant and unavoidable with respect to the intersections of Black Mountain Road/Park Village Road and Black Mountain Road/SR-56 (eastbound and westbound ramps) and the street segments of Black Mountain Road from SR-56 Eastbound Ramps to Park Village Road and Black Mountain Road from Park Village Road to Mercy Road.

*Reference:* Final EIR, pages 5.2-9 through 5.2-34

2. *Description of Significant and Unavoidable Impacts:* As described in Section 5.2.2, the project would not result in any direct, significant adverse transportation/circulation impacts to freeway mainlines. However, the project would result in significant, cumulative traffic-related impacts on the following freeway mainline segments:

Freeway Mainlines

- SR-56 from Carmel Valley Road to Camino Del Sur: Eastbound
- SR-56 from Carmel Valley Road to Camino Del Sur: Westbound
- SR-56 from Camino Del Sur to Black Mountain Road: Eastbound
- SR-56 from Camino Del Sur to Black Mountain Road: Westbound

*Facts in Support of the Findings:* Mitigation Measure Tra-9 provides mitigation to address the project's potentially significant, cumulative impacts to freeway mainline segments.

The recommended measure requires payment of FBA fees towards the construction of the *Torrey Highlands PFFP Project No. T-1.2B* to expand SR-56 from Interstate 5 to Interstate 15 to a six-lane freeway.

Mitigation Measure Tra-9 obligates the project to pay FBA fees towards the required freeway improvements. However, certain factors preclude the City from being able to make a finding that imposition of the mitigation measures would reduce the project's cumulatively significant impacts to the referenced freeway mainlines to less than significant levels. Timely completion of the SR-56 widening is outside of the City's control due to the fact that it is a project to be completed by others. The SANDAG Regional Transportation Plan (RTP) does not contemplate completion of the SR-56 widening outlined in Mitigation Measure Tra-9 until Year 2040 (after the project's cumulative impact would occur in Year 2035). In addition, FBA funding alone is not sufficient to implement the \$141 million freeway expansion project; additional funding sources outlined in the RTP include \$119 million in TransNet funding via sales tax revenues earmarked for regional transportation improvements. For these reasons, and even though the project is obligated to pay FBA fees toward those improvements, the City cannot assure that all those improvements would be fully funded and constructed prior to the time such improvements are needed to mitigate the cumulative impacts of the project. No other feasible mitigation measure is available that would avoid or further reduce the above referenced cumulative project impact to a less than significant level. Thus the cumulative project impacts to the above referenced mainline freeways are regarded as significant and unavoidable.

*Reference:* Final EIR, pages 5.2-9 through 5.2-34

## **B. Visual Effects/Neighborhood Character**

1. *Description of Significant and Unavoidable Impacts:* As described in Section 5.8.4, the project would require approximately 20,574 cubic yards per graded acre of cut and fill, which is substantially more than the 2,000 cubic yards of cut or fill per graded acre identified in the City's Significance Determination Thresholds as potentially significant relative to substantial changes in existing landform. The project's required cut and fill would also exceed the City's 10-foot high significance threshold for manufactured slopes. The public roads component of the project would similarly result in the disturbance of steep slopes by changing the elevation of existing steep hillsides by more than five feet. Although these potentially significant impacts would be reduced to the extent feasible through project design features that would result in the construction of a series of retaining walls and implementation of other project design features such as landscaping, the impact on existing natural landforms would be significant.

*Facts in Support of the Finding:* The City finds that specific economic, legal, social, technological, or other considerations make any potential mitigation infeasible. Due to the hillside topography of the portion of the project site to be occupied by the public road (Camino Del Sur), the threshold of significance's focus on imitation of the existing on-site



landform and/or the undisturbed, pre-existing surrounding neighborhood landforms, the need to comply with City road design standards and engineering practices, design, engineering and site planning requirements for implementation of a mixed use development like the project, no feasible mitigation measures are available that would result in the project's proposed landforms very closely imitating the existing on-site landform and/or the undisturbed, pre-existing surrounding neighborhood landforms. Thus, the project would result in a substantial change in the existing landform that is significant and unavoidable.

*Reference:* Final EIR, pages 5.8-10 through 5.8-11

#### **IV. FINDINGS REGARDING PROJECT ALTERNATIVES**

As the project would result in one or more unavoidable significant environmental effects, the City must make findings with respect to the alternatives to the project considered in the Final EIR. Those findings must evaluate whether the alternatives could feasibly avoid or substantially lessen the project's unavoidable significant environmental effects while achieving most of the project's objectives (listed in Section 1.II above and Section 3.1).

The City, having reviewed and considered the information contained in the Final EIR and the Record of Proceedings, and pursuant to Public Resource Code §21081(a)(3) and State CEQA Guidelines §15091(a)(3), makes the following findings with respect to the alternatives identified in the Final EIR.

##### **A. Project Alternatives**

As required by CEQA, the Final EIR evaluated a reasonable range of potentially feasible project alternatives. Alternatives already considered but rejected as infeasible are discussed in Section 8.3. As part of that evaluation, the Final EIR considered the potential for off-site alternatives for the mixed-use development and the road development portions of the Project. With respect to the mixed-use development, the project is located within Rancho Peñasquitos and Torrey Highlands communities. Rancho Peñasquitos is virtually built out and Torrey Highlands is rapidly urbanizing. Most of the undeveloped properties of similar size with proximity to SR-56 are under construction or are currently processing development approvals, and they do not include a commercial use designation as intended by project objectives 3 and 7. The project's residential and commercial land uses are also consistent with the underlying land uses already contemplated for the project site by the General Plan and the Torrey Highlands Subarea Plan. No alternative sites within these communities would offer environmental advantages that could substantially reduce or eliminate the Project's potentially significant adverse impacts. Additionally, there are no other sites under the owner/applicant's control that would allow for development of a mixed-use development that would meet the project objectives and maximize the efficiency in use of the underutilized portion of Torrey Highland communities that are also located entirely outside the MHPA.

With respect to the road project, no feasible off-site alternatives exist. A fundamental project objective of the road project is to connect the existing segments of Camino Del Sur already in place to the north and south, consistent with the adopted plans for the Rancho Peñasquitos and Torrey Highlands communities. Relocating the proposed road to a different site would

also not comply with the policies in the local community plans that contemplate the extension of Camino Del Sur in the proposed location where it would not adversely impact existing residential uses and would minimize the road's intrusion into nearby open space. Further, as the north and south ends of the road are fixed and any improvements must satisfy design criteria in the City's Street Design Manual regarding horizontal/vertical distances, and grades, a different off-site location for the road is not feasible.

The Final EIR evaluated the following four alternatives and compared the impacts of each alternative to those of the project.

- Alternative 1 - No Project/No Development Alternative
- Alternative 2 - No Project/Existing Entitlements Alternative
- Alternative 3 - Reduced Project Alternative
- Alternative 4 - Vernal Pool Avoidance Alternative

1. *No Project/No Development Alternative* (Section 8.4)

*Alternative Description/Impacts:* The No Project/No Development Alternative assumes that the site would remain in its current condition (i.e., vacant and undeveloped). The alternative analyzes the CEQA impacts under circumstances where the project site would not be developed with the proposed project uses or any other uses permitted under the existing approvals. Compared to the project, the No Project/No Development Alternative would avoid or substantially lessen all identified significant project-related impacts below a level of significance, including significant and unmitigated transportation/circulation and visual effects/neighborhood character impacts associated with the project.

*Facts in Support of the Finding:* CEQA requires the analysis of this alternative. While the alternative may avoid project impacts, the alternative would not meet any of the basic project objectives listed above or in Section 3.1. Accordingly, the City rejects this Alternative as infeasible on the basis that it fails to meet the project objectives and it would not fulfill applicable public policy principles identified in the City General Plan (i.e., Community and Housing Element policies LU-H.2 and LU-H.3; Land Use and Community Planning Element policies LU-H.4, LU-H.6 and LU-H.7, Urban Design Element policies UD-B.5, UD-C.1 through UD-C.6; and Economic Prosperity Element policies EP-B.2 through EP-B.5 and EP-B.9) and elsewhere with respect to use of the project site or the implementation of important circulation element roads.

The City finds that although the No Project/No Development alternative would avoid all potentially significant project-related impacts to land use, transportation/circulation, biological resources, historical resources, and paleontological resources (which would be mitigated with the measures proposed by the project) and would avoid significant and unmitigated transportation/circulation and visual effects/neighborhood character impacts of the proposed project, specific economic, legal, social, technological, or other considerations, including that this alternative would not meet any of the project objectives and would not fulfill applicable public policy principles identified in the City General Plan and elsewhere with respect to use of the project site or the implementation of important

circulation element roads make the No Project/No Development Alternative infeasible, and rejects the No Project/No Development Alternative on such grounds.

2. *No Project/Existing Entitlements Alternative (Section 8.5)*

*Alternative Description/Impacts:* The No Project/Existing Entitlements Alternative would involve developing the Merge 56 site pursuant to the existing Torrey Highlands Subarea Plan and Rancho Peñasquitos Community Plan using entitlements received under the previously approved Rhodes Crossing project. Specifically, this alternative would develop the site with 250,000 square feet of commercial uses, 273,855 square feet of self-storage, and 242 multi-family residences. The No Project/Existing Entitlements Alternative would involve the construction of a standard, regional commercial center wherein the commercial buildings would be situated near the center of the site and surrounded by parking fields. Under this alternative, the self-storage facility would be situated behind the commercial center adjacent to SR-56 and the multi-family housing units would be clustered near SR-56 adjacent to the Carmel Mountain Road overpass (as shown in Figure 8-1).

The focus of the proposed commercial center under the No Project/Existing Entitlements Alternative would be a plaza, two major tenants, space for smaller shops and kiosks in the parking lot. A meandering pedestrian pathway would extend from the plaza eastward to the multi-family residential area and Carmel Mountain Road. The residential units would be wrapped around multi-story parking structures and would include 47 affordable units, as required in the Torrey Highlands Subarea Plan. Two small open space areas would remain undeveloped to protect the isolated vernal pools that exist on site.

No single-family residences would be constructed under this alternative. The mixed-use commercial center with a variety of commercial, office, hotel, and residential uses and linkages proposed by the project would not be constructed under this alternative. Camino Del Sur and Carmel Mountain Road would be constructed as four-lane major roadways under this alternative, with no changes from their planned road classifications or reduction in width.

Implementation of the No Project/Existing Entitlements Alternative would not avoid or substantially lessen project impacts to visual effects/neighborhood character (landform) or cumulatively significant impacts to transportation/circulation impacts below a level of significance. Identified significant impacts to land use, biological resources, historical resources, and paleontological resources from the project would remain the same or greater under this alternative. For example, this alternative would result in greater impacts to biological resources and visual effects compared to those identified for the project due to the increased road right of way and grading (i.e., approximately 7.5 more acres of grading for Camino Del Sur) and greater biological resource impacts due to the creation of the two, isolated, on-site vernal pools instead of the off-site vernal pool mitigation within the MHPA identified in the Final EIR. As such, this alternative is not environmentally superior to the project in these respects. However, potential land use impacts of the project would be avoided as the General Plan and Community Plan

amendments would not be needed to implement the No Project/Existing Entitlements Alternative. Noise and GHG impacts would be less than significant, similar to the project.

*Facts in Support of the Finding:* Compared to the project, implementation of the No Project/Existing Entitlements Alternative would avoid or substantially lessen only the potentially significant land use impacts associated with the project's identified General Plan and Community Plan amendments. This alternative would not avoid or substantially lessen any of potentially significant impacts of the project. This alternative would increase the significant unavoidable impacts on visual effects/neighborhood character (landform/steep slopes) due to the increased grading associated with the original design for the public road construction. Those same greater grading impacts would result in greater biological resource impacts than the No Project/Existing Entitlements Alternative's proposed, isolated, on-site vernal pool mitigation. Thus, this alternative is not environmentally superior to the project. Additionally, the No Project/Existing Entitlements Alternative would not meet most of the project objectives listed above and in Section 3.1. The No Project/Existing Entitlements Alternative would not allow for the establishment of a comprehensively designed mixed-use center that would further the goals of the City by creating a "village" and walkable community, as envisioned in Policies LU-H.4, LU-H.6 and LU-H.7 of the General and Community Plans. This alternative would only provide multi-family housing; therefore it would not provide a range of housing types, which would conflict with General Plan Policies LU-H.2 and LU-H.3. Furthermore, the No Project/Existing Development Alternative would not fulfil public policy principles identified in the City General Plan (i.e., Community and Housing Element policies LU-H.2 and LU-H.3; Urban Design Element policies UD-B.5, UD-C.1 through UD-C.6; and Economic Prosperity Element policies EP-B.2 through EP-B.5 and EP-B.9).

Thus, the City finds that the No Project/Existing Entitlements Alternative is not environmentally superior to the project. The City further finds that specific economic, legal, social, technological, or other considerations, make the No Project/Existing Entitlements Alternative infeasible. Thus, the City rejects the No Project/Existing Entitlements Alternative on such grounds.

### 3. *Reduced Project Alternative* (Section 8.6)

*Alternative Description/Impacts:* The Reduced Project Alternative would involve reducing the intensity of the mixed-use development such that cumulatively significant and unmitigated transportation/circulation impacts would be avoided or minimized. This could be accomplished by reducing project traffic by 70% (to 5,800 average daily trips). This reduction would translate to a substantially lessened contribution to cumulative impacts along the impacted segments and intersections of Black Mountain Road resulting in less than significant cumulative impacts to those street segments. A 70% reduction in project trips would also substantially lessen the project's contribution to cumulative impacts to SR-56. The average daily trips reduction associated with the Reduced Project Alternative could be accomplished in any number of ways, including reducing the amount of commercial/office and/or residential development constructed on site. For the purposes of the comparative analysis contained in Section 8.0 of the Final EIR, the Reduced Project Alternative is defined as a 70% reduction in all of the uses proposed on the project site

resulting in a commensurate reduction in average daily trips. All other aspects of this alternative would be the same as the project, including the amount of grading required to construct the project and extend the public roads.

Implementation of the Reduced Project Alternative would eliminate and reduce cumulatively significant impacts to transportation/circulation but not to levels that are below significance for one intersection at Black Mountain Road/SR-56 ramp and three SR-56 freeway segments. Identified significant impacts to land use, biological, historic and paleontological resources from the project would remain the same under this alternative. Significant and unavoidable impacts to visual effects/neighborhood character (landform) would still occur under this alternative and would not be lessened. Because this alternative would eliminate cumulatively significant impacts to street segments of Black Mountain Road, as well as reduce the project's contribution to cumulatively significant impacts to freeway ramp intersections and freeway mainlines along SR-56 it is identified in Section 8.8 as the Environmentally Superior Alternative to the project.

*Facts in Support of the Finding:* Although cumulatively significant impacts to transportation/circulation would be eliminated (street segments) and/or reduced (intersections/freeway segments) under the Reduced Project Alternative, as shown in Tables 8-2 through 8-4, they would not be reduced to levels that would be below significance for intersections along Black Mountain Road and SR-56 freeway segments because of the uncertainty associated with the improvements needed to avoid the cumulative impacts, as described in Section IV.A.1. Significant and unavoidable visual effects/neighborhood character (landform/steep slopes) impacts would also still occur under this alternative and would not be lessened by the Reduced Project Alternative since similar grading would be required as the project.

Because the Reduced Project Alternative would be a 70% reduction in vehicular trips due to an overall 70% reduction in each component of the mixed use development on site and substantially lessen the project's development potential below levels contemplated in the Subarea Plan, it would not fully satisfy the project objectives outlined in Section 3.0 as described herein. A 70% reduction in housing, for instance, would mean the project site would be developed at a gross density of 1.75 dwelling units (du) per acre (73 residential units) at a site where the 242 units are contemplated under the existing and proposed community plan. Contrary to the project objectives and the General Plan's Housing Element, the reduced density associated with this alternative dramatically underutilizes one of the few remaining sites in the Community Planning Area designated for medium density housing at a time where housing demand exceeds housing supply. A proportionate reduction in the amount of affordable housing would also frustrate the Community Plan's and General Plan's goals of substantially increasing the amount of affordable housing provided in an area of the City with few affordable units.

Reductions of other proposed uses would also affect the project's ability to achieve its project objectives. For example, because the Reduced Project Alternative would significantly restrict the amount of development on site, the intensity and density of residential/commercial/office development would not be sufficient to establish a comprehensively designed mixed-use center that would further the goals of the City by

creating a "village" and walkable community, as envisioned in Policies LU-H.4, LU-H.6 and LU-H.7 of the General and Community Plans. With only the potential for 73 multi-family units, the ability to provide a range of housing types would be compromised, which would conflict with General Plan Policies LU-H.2 and LU-H.3. At only approximately 150,000 square feet of commercial space (70% reduction from proposed), the mix of commercial uses would not achieve the project's objective to implement a "park once" strategy in accordance with the village design concepts expressed in General Plan Policy UD-C.6, wherein a sufficient density is proposed that would encourage users to access multiple destinations in one vehicle trip and encourages walkability between destinations. Similarly, the reduced amount and diversity of commercial uses likely means the project would not attract complimentary uses (such as office, retail and entertainment) that facilitate shared parking arrangements and the minimization of large areas of empty parking spaces as suggested in General Plan Policy ME-G.2. Furthermore, a 70% reduction in development potential of the project site would also significantly reduce the amount of impact fees collected from developments within the community. As the Torrey Highlands community is largely built out and the Merge 56 property is the largest of the remaining undeveloped properties in the community, a portion of the community improvements identified in the PFFP would remain unfunded because the project applicant's contribution to the PFFP would be substantially less. Without the project's full payment into the PFFP, the Reduced Project Alternative could jeopardize the City's ability to complete all the required public infrastructure improvements contemplated for the community. In light of the above, and other evidence in the Record of Proceedings, the City finds that specific economic, legal, social, technological, or other considerations make the Reduced Project Alternative infeasible, and rejects the Reduced Project Alternative on such grounds.

#### 4. *Vernal Pool Avoidance Alternative* (Section 8.7)

*Alternative Description:* The Vernal Pool Avoidance Alternative would involve modifying the proposed grading plan for the mixed-use development area to avoid direct impacts to the two vernal pools and their buffered watersheds by installing retaining walls and fencing around the resources and placing them in open space lots (similar to the No Project/Existing Entitlements Alternative). The height and length of the retaining walls would be greater under this alternative, as compared to the No Project/Existing Entitlements Alternative. Because of the locations of the existing vernal pools relative to the proposed commercial and residential (townhome) buildings, public gathering spaces, and Private Drive M, substantive design changes along the frontage of the commercial center would be required to implement the Vernal Pool Avoidance Alternative (as shown in Figure 8-2).

Specifically, portions of the commercial center would be removed to preserve the western vernal pool, located near the frontage of the cinema and retail stores along the central plaza. Preservation of the eastern vernal pool would require the removal of retail space, relocation of the easternmost segment of Private Drive M, and elimination of the eastern traffic circle. Relocation of Private Drive M and its connections would remove and/or reduce the size of several townhome units fronting the private drive. As such, visual access from Private Drive M to some of the commercial buildings would be partially obstructed by the elevated vernal pool lots, commercial space formerly fronting the central plaza

would front the retaining walls surrounding the vernal pool lots, and pedestrians using the plaza would be directed around the vernal pool lots. This alternative would reduce the amount of proposed commercial space (by approximately 15,905 square feet) and at least one multi-family residential unit, as compared to the project. All other aspects of this alternative would be the same as the project, including extension of public roads.

*Facts in Support of the Finding:* The Vernal Pool Avoidance Alternative would avoid impacts to the two vernal pools within the private development portion of the project. The alternative would not avoid the project's direct impacts to vernal pools within the public road right-of-way because avoidance would not be feasible given their location in the middle of the road and the need to comply with the City's engineering design standards for public road and infeasibility of realignment. Although the vernal pools and their watersheds within the mixed-use development area would be protected in place, the significant, adverse indirect effects to those resources would increase under this alternative. In light of the existing poor quality of those vernal pools combined with the fact that the preserved vernal pools would be isolated from other higher-quality vernal pools and uplands and located within the mixed use development, this alternative would indirectly degrade their quality further and potentially make the vernal pools unviable in the future. Therefore, indirect project effects to vernal pools would be greater under this alternative than under the project. Identified significant impacts to land use, transportation/ circulation, historical resources and paleontological resources associated with this alternative would remain similar or slightly less to the project. Significant and unavoidable impacts to visual effects/neighborhood character (landform/steep slopes) under this alternative would increase as a result of the increased use of retaining walls and less cohesive design resulting from the required vernal pool protection measures. In addition, cumulatively significant and unavoidable impacts to transportation/circulation would still occur under this alternative, although they would be slightly reduced due to the reduction in development.

Because the Vernal Pool Avoidance Alternative would require the removal of retail space, relocation of onsite private drive, elimination of a traffic circle, and elimination of several residential units, causing a visual obstruction between the private drive and central plaza and the retail space, it would not be consistent with many of the project objectives outlined in Section 3.0 related to the development of a mixed-use center using sustainable design elements that create a pedestrian-oriented community with active retail spaces and public gathering spaces. Preservation of the two vernal pools and the retaining wall surrounding them would obstruct the street-level visibility of the commercial space (i.e., cinema and retail), which is inconsistent with the Torrey Highlands Community Design Guidelines for Local Mixed Use Centers. In addition, preservation of two isolated vernal pools surrounded by development would be inconsistent with the intent of the MSCP Subarea Plan wherein sensitive resources are connected to other habitat areas and protected from edge effects that would threaten their long-term viability resulting in habitat degradation. Based on the facts presented above, and other evidence in the Record of Proceedings, the City finds that specific economic, legal, social, technological, or other considerations make the Vernal Pool Avoidance Alternative infeasible, and rejects the Vernal Pools Avoidance Alternative on such grounds.

## V. FINDINGS REGARDING OTHER CEQA CONSIDERATIONS

### A. Growth Inducement (Section 7.2)

Based on the discussion contained in Section 7.2, the City finds that the project would not result in significant growth-inducing impacts. The mixed-use development component of the project is part of and consistent with the growth anticipated in the Torrey Highlands Subarea Plan and includes road improvements already contemplated in the General Plan and both the Subarea Plan and the Rancho Peñasquitos Community Plan. During project construction, demand for various construction trade skills and labor would increase but, given the scale and nature of the project, this demand would be met predominantly by the local labor force, and would not require importation of a substantial number of workers or cause an increased demand for temporary or permanent local housing. Thus, the City finds that no substantial short-term growth-inducing effects would result from implementation of the project.

In terms of long-term growth, the City finds that the project would contribute to the previously-identified long-term growth-inducing impacts identified in the Rhodes Crossing EIR, Subarea Plan EIR and North City Future Urbanizing Area (NCFUA) Framework Plan EIR, through the development of commercial and residential uses and the extension of public roads. Most lands surrounding the project are: (1) already developed; (2) currently processing development applications in accordance with the adopted planning documents; or (3) identified for preservation as open space. The City finds that surrounding land would not be pressured to increase existing densities due to either job opportunities or the relatively higher density of uses proposed for the project site. Extension of Camino Del Sur and Carmel Mountain Roads would complete the planned circulation system in the communities and link existing built out areas to the north and south of the project site. The roads would be sized to accommodate long-term traffic volumes projected in the project area. As part of the road extensions, both sewer and water infrastructure would be installed within their right of ways to serve the project site. Beyond those extensions, no expansion of existing utility systems would be required to service the project area. In addition, very few parcels of developable land remain undeveloped in this portion of the City. Therefore, the City finds that extension of the public roads and utilities associated with the project would not open up a new area for development beyond levels already anticipated in adopted plans. Given the nature of the project's short-term and long-term growth inducing effects, the City finds that the project is not anticipated to directly or indirectly induce substantial population growth that would have a significant adverse impact on the environment.

### B. Significant Irreversible Environmental Changes (Section 7.4)

Section 15126.2(c) of the CEQA Guidelines requires an EIR to address any significant irreversible environmental changes that may occur as a result of project implementation. Consistent with the analysis in Section 7.4, the City finds that implementation of the project would not result in significant irreversible impacts to agricultural and forestry lands, mineral resources, or historic resources (built environment). The project site is currently vacant, contains no agricultural resources, and is designated for commercial and residential uses and not mineral extraction. No water bodies are located on the site or within the project vicinity.



Development of the project would entail the commitment of energy and non-renewable resources, such as energy in the form of electricity, energy derived from fossil fuels, natural gas, construction materials, potable water, and labor during construction. As the project's intensity of development is already identified in the relevant planning documents, that usage of energy and non-renewable resources is also already contemplated. Further, the project design features include a number of sustainability elements, such as solar canopies on parking decks, use of low-flow fixtures, planting of low water usage, native landscaping and installation of porous hardscape surfaces, to reduce the consumption of energy and non-renewable resources. As a result, associated project impacts would be less than significant. Nonetheless, the City finds that the project's use of these resources would have an incremental effect on the regional consumption of these commodities, and therefore, result in long-term, irretrievable losses of non-renewable resources such as fuel and energy.

Existing on-site natural resources would be removed as a result of project grading and planned improvements, including incremental loss of undeveloped land/open space, as well as long-term displacement of native habitats and species from the project site as described in the FEIR. The City finds that the removal of native habitats, including direct impacts to eight sensitive wildlife species including San Diego fairy shrimp and coastal California gnatcatcher, would be an irreversible loss of biological resources. Although irreversible, the City finds that these impacts would be mitigated to a less than significant level by measures imposed on the project as described in Section 5.3 and Section I.C of these Findings.

Although the known historical and paleontological resources in the study area are not considered significant, construction of the project has a potential to disturb currently unknown, subsurface historical (archaeological) and paleontological deposits. The City finds that impacts to unknown subsurface archaeological resources would not be irreversible because they would be mitigated to below a level of significance by construction monitoring measures identified in Section 5.4 and described in Section II.D of these Findings. The City finds that potential impacts to paleontological resources would result in a significant irreversible change to a non-renewable resource; however, mitigation identified in Section 5.5 and discussed in Section II.E.2 of these Findings would reduce any potentially significant impacts to below a level of significance.

## **SECTION 5: STATEMENT OF OVERRIDING CONSIDERATIONS**

Public Resources Code §21081(b) prohibits approval of a project with significant, unavoidable and unmitigable adverse impacts resulting from infeasible mitigation measures or alternatives unless the agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. CEQA Guidelines § 15093 adds that the decision-making agency must "balance, as applicable, economic, legal, social, technological, or other benefits of a project against its unavoidable environmental risks when determining whether to approve the project." CEQA further requires that, when the Lead Agency approves a project which will result in the occurrence of significant effects which are identified in the Final EIR, but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its actions based on the Final EIR and/or other information in the record. The Statement shall be supported by substantial evidence in the record (§15093[b] of the State CEQA Guidelines). This Statement does not

substitute for, and shall be in addition to, findings required pursuant to §15091 (§15093[c] of the State CEQA Guidelines) as contained in these Findings.

The City Council, (i) having independently reviewed the information in the Final EIR and the record of proceedings; (ii) having made a reasonable and good faith effort to eliminate or substantially lessen the significant impacts resulting from the project to the extent feasible by adopting the mitigation measures identified in the EIR; and (iii) having balanced the benefits of the Merge 56 Project against the significant environmental impacts, chooses to approve the Merge 56 Project, despite its significant environmental impacts, because specific economic, legal, social, and other benefits of the project render the significant environmental impacts acceptable.

The following Statement identifies why, in the City Council's judgment, the benefits of the Merge 56 Project as approved outweigh the unavoidable and unmitigable significant impacts. Each of these public benefits serves as an independent basis for overriding all significant, unavoidable and unmitigated impacts. Substantial evidence supports the various benefits. Such evidence can be found either in the preceding sections, which are incorporated by reference into this section, the Final EIR, or in documents that comprise the Record of Proceedings in this matter.

#### I. FINDINGS FOR STATEMENT OF OVERRIDING CONSIDERATIONS

##### 1. Development of a Sustainably Designed Mixed-Use Center

The project will develop a contemporary-styled, sustainable, mixed-use center containing a balance of commercial, office, hotel and residential uses designed with walkability in mind to reduce occupants' and community reliance on cars compared to traditional suburban developments. The project will implement the "villages" and mixed-use center planning concepts embodied in the General Plan and Subarea Plan, including, without limitation, General Plan Land Use and Community Planning Element policies (Policies LU-H.4, LU-H.6 and LU-H.7), Urban Design Element policies (Policy UD-B.5 and Policies UD-C.1 through UD-C.6) and Economic Prosperity Element (Policies EP-B.2 through EP-B.5 and Policy EP-B.9). The project is also consistent with the City's Climate Action Plan (CAP) and will meet the goals of the City's Conservation, Mobility and Urban Design elements directed at reducing GHG emissions. The project will comply with these City policies by integrating sustainability features such as the following into its design:

- Centralized parking structures and walkable streets and plazas in the site plan will encourage a "park once" strategy to serve multiple needs of residents and users and reduce vehicle trips;
- Neighborhood-serving retail will be placed in close proximity to residences in the site plan, all within a site with ready access to employment opportunities, and reduce vehicle trips;
- Mixed-use live/work/play concept integrated into the site plan, wherein residents can live near their job, shop near their home, participate in on-site and nearby off-site recreation/fitness activities, and enjoy entertainment at the restaurants/cinema without leaving the property or its immediate vicinity in vehicles;
- A pedestrian-oriented design will be utilized with multiple walkways linking commercial and residential areas to allow residents to walk rather than drive to jobs or shopping opportunities and reduce vehicle trips;

- Bike racks will be provided in commercial and residential areas at levels that will substantially exceed the 5% minimum requirements in the Climate Action Plan; specifically, the project will provide 226 more commercial/office bike racks and 80 more residential bike racks than required;
- Trail connections and bike path connections will be provided in the on the project site to facilitate non-vehicular travel; and
- Electric vehicle (EV) charging stations (i.e., 65 EV charging stations) will be provided within the commercial and residential parking areas at levels that will exceed the minimum requirements in the Climate Action Plan; specifically, the project will provide 17 more commercial EV charging stations and 5 more residential EV charging stations than required.
- A Transportation Demand Management program will be implemented to encourage users to rely on alternative transportation opportunities and minimize vehicle trips off-site.

2. Provision of a Range of Housing Stock, including Affordable Units

Implementation of the project will provide a range of residential housing types, including 242 single-family residences, apartments, and condominiums that will meet the varied needs of existing and future City residents and be both market-rate and affordable. Construction of new affordable housing on-site will implement objectives of the City General Plan's Land Use and Community Planning Element and Housing Element related to the provision of a variety of housing types and sizes within varying levels of affordability in residential and village developments (Policies LU-H.2 and LU-H.3). Implementation of the project will assist in the implementation of San Diego's General Plan City of Villages strategy and regional smart growth principles. Per the SANDAG 2010-2020 Regional Housing Needs Assessment (RHNA), it is currently forecast that the region will build 125,000 housing units but will need 161,980 housing units. Thus, the construction of 242 homes, including 47 affordable units (versus payment of in-lieu fees for the affordable units) will directly support the region's housing supply shortfall and City goals for a range of housing.

3. Expansion of Regional Mobility and Circulation Improvements

The proposed roadway improvements will provide local and regional access to the Merge 56 Project, surrounding properties and local community, as envisioned in the Circulation Elements of the Torrey Highlands Subarea Plan and Rancho Peñasquitos Community Plan, in a configuration that is more environmentally friendly but consistent with previously-approved alignments and dedicated rights-of-ways for the roads. Construction of planned transportation improvements identified in the Torrey Highlands Subarea Plan and Rancho Peñasquitos Community Plan that have remained incomplete decades after the construction of the surrounding neighborhoods will result in a number of benefits, including:

- Improved safety in the event of emergency evacuation (i.e., wildland fires or road detours) as the road way improvements proposed by the project provide alternative, and, for many, a more direct evacuation and emergency response route;
- More direct access to Westview High School for residents in Torrey Highlands and Rancho Peñasquitos who currently must use circuitous routes on surface roads or rely on SR-56 to access the high school that serves their local students;

- Improved circulation between and within the existing neighborhoods, such as Park Village and Twin Trails, where a direct route does not currently exist, thus removing up to 4,000 daily trips from heavily congested segments of Black Mountain Road;
- Improved pedestrian and bicycle access through the construction of a network of sidewalks, bike lanes, bike path connections, and off-road trail connections that will better link the project and the surrounding area to nearby roads, development, and local open space systems (i.e., Los Peñasquitos Canyon Preserve, Darkwood Canyon and Del Mar Mesa); and
- Reduced grading effects on biologically sensitive habitats and natural terrain than the higher classification road envisioned in the Community Plans leading to a greater balance between the environmental impacts of public road construction and the traffic capacity and circulation needs of the local communities.

#### 4. Employment and Financial Benefits

Development and operation of the project will create 300 full-time construction jobs and 1,350 to 1,600 permanent jobs for the region. Compared to the undeveloped site, the approximately \$40 million project will also generate increased property tax, sales tax and transient occupancy tax revenue. In addition, the project applicant will contribute approximately \$35 million in development impact fees and community improvements which will assist the City in completing Circulation Element roads and other community facilities identified in the applicable Public Facilities Financing Plans to the benefit of the community as a whole.

#### 5. Expansion of Regional Water Infrastructure

The project will install 16-inch public water main and 24-inch public recycled water line in the Camino Del Sur right-of-way. In addition, a 16-inch public water main and 8-inch public recycled water line will be constructed within the Carmel Mountain Road right-of-way. These public improvements to the water and recycled water system will be sized larger than needed to service the project in order to complete the regional water and wastewater system within the SR-56 corridor, thus, allowing existing and future development to utilize recycled water and reduce regional reliance on potable water for irrigation, among other uses.

## II. CONCLUSION

For the foregoing reasons, the City finds that the project's adverse, unavoidable environmental impacts are outweighed by the above-referenced benefits, any one which individually would be sufficient to outweigh the adverse environmental effects of the project. Therefore, the City has adopted these Findings and Statement for the project.

## EXHIBIT B

### MITIGATION MONITORING AND REPORTING PROGRAM

#### MERGE 56 - PROJECT NO. 360009

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA, 92101. All mitigation measures contained in the Environmental Impact Report No. 360009/SCH No. 2014071065 shall be made conditions of Planned Development Permit No. 1266871, Site Development Permit No. 1266883, Conditional Use Permit No. 1266881, Vesting Tentative Map No. 1266869, Easement Vacation No. 2076453, and Public Right-of-way Vacation No. 2076458 (amendment to Planned Development Permit No. 53203 Site Development Permit Nos. 53204, 3278 and 40-0386, Conditional Use Permit No. 53205, and Vesting Tentative Map No. 7938), as may be further described below.

The following general requirements would be a part of the proposed project MMRP:

#### 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  
Archaeological Monitor  
Native American Monitor  
Paleontological Monitor  
Acoustician  
Geologist

**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 352250 and/or Environmental Document Number 36009, 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:

- Encroachment Permit from California Department of Transportation (Caltrans);
- National Pollutant Discharge Elimination System (NPDES) Municipal Storm Water Permit Compliance;
- NPDES General Construction Activity Permit for Stormwater Discharges Compliance;
- California Fish and Game Code Section 1602 Streambed Alteration Agreement;
- Federal Clean Water Act Section 404 Permit;
- Federal Endangered Species Act Section 7 Consultation, if needed; and
- Federal Clean Water Act Section 401 Water Quality Certification.

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:

<b>Table 9-1 DOCUMENT SUBMITTAL/INSPECTION CHECKLIST</b>		
<i><b>Issue Area</b></i>	<i><b>Document Submittal</b></i>	<i><b>Associated Inspection/Approvals/Notes</b></i>
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	Land Use Adjacency Issue Site Observations
Biology	Biologist Limit of Work Verification	Limit of Work Inspection
Biology	Biology Reports	Biology/Habitat Restoration Inspection

Archaeology	Archaeology Reports	Archaeology/Historic Site Observation
Paleontology	Paleontology Reports	Paleontology 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 to biological resources within the MHPA, and therefore land use policy, shall be implemented by the Applicant and is required consistent with the City's MSCP Subarea Plan and Biology Guidelines. Implementation of Mitigation Measure Bio-1 *Biological Resource Protection During Construction* and Mitigation Measure Bio-3 *Upland Vegetation Communities* would mitigate most potential indirect impacts associated with grading/land development. The following mitigation is also required to mitigate land use adjacency impacts to the MHPA to below a level of significance.

***Lu-1 Land Use Adjacency Guidelines***

Prior to issuance of any construction permit or notice to proceed, Development Services Department/Land Development Review, and/or MSCP staff shall verify the Project 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 Project 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, including the San Diego National Wildlife Refuge, shall be delineated on the CDs. Development Services Department 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.

**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 or vernal pool preserves.



**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 or vernal pool preserves; no equipment maintenance shall be conducted within or near the MHPA or vernal pool preserves.

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 and off-site vernal pool preserve areas shall be directed away/shielded from the MHPA and be subject to City Outdoor Lighting Regulations per LDC Section 142.0740.

**E. 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 following: coastal California gnatcatcher (March 1 through August 15). If construction is proposed during the breeding season for the species, a USFWS protocol survey shall be required in order to determine species presence/absence. If a protocol survey is 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.

#### 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 federal Endangered Species Act 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 Qualified 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.

If evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

## **TRANSPORTATION/CIRCULATION**

### ***Tra-1 Camino Del Sur/SR-56 Westbound Ramps***

Prior to issuance of the first building permit, the owner/permittee shall pay FBA fees toward the construction of *Torrey Highlands PFFP Project No. T-1.3* to provide the northbound to westbound loop on-ramp at Camino Del Sur/SR-56 Westbound Ramps, to the satisfaction of the City Engineer.

### ***Tra-2 Camino Del Sur/SR-56 Eastbound Ramps***

Prior to issuance of the first building permit, the owner/permittee shall pay FBA fees toward the construction of *Torrey Highlands PFFP Project No. T-1.3* (corresponding to *Black Mountain Ranch PFFP Project No. T-15.1*) to provide the southbound to eastbound loop on-ramp at Camino Del Sur/SR-56 Eastbound Ramps, to the satisfaction of the City Engineer.

### ***Tra-3 Carmel Mountain Road/Black Mountain Road***

Prior to issuance of the first building permit, the owner/permittee shall assure by permit and bond the restriping of the northbound approach to provide an additional northbound left-turn lane within the existing curb-to-curb width, mirroring the geometry of the southbound approach and restripe the northbound receiving lanes and red curb an additional 160 feet north of Carmel Mountain Road, to the satisfaction of the City Engineer.

### ***Tra-4 Black Mountain Road/ SR-56 Westbound Ramps***

Prior to issuance of the first building permit, the owner/permittee shall provide a fair share contribution (17.7%) toward the unfunded portion of *Rancho Peñasquitos PFFP Project No. T-2D* (corresponding to *Black Mountain Ranch PFFP Project No. T-57*, *Pacific Highlands Ranch PFFP Project No. T-11.1*) to widen Black Mountain Road from Twin Trails Drive to the Community Plan boundary to its ultimate classification as a Six-Lane Primary Arterial, to the satisfaction of the City Engineer. This improvement shall include the restriping of the temporary striping on Black Mountain Road overpass at SR-56 to provide three (3) thru lanes in the northbound direction, to the satisfaction of the City Engineer.

**Tra-5 Black Mountain Road/ SR-56 Eastbound Ramps**

Prior to issuance of the first building permit, the owner/permittee shall provide a fair share contribution (25.2 percent) toward the unfunded portion of *Rancho Peñasquitos PFFP Project No. T-2D* (corresponding *Black Mountain Ranch PFFP Project No. T-57, Pacific Highlands Ranch PFFP Project No. T-11.1*) to widen Black Mountain Road from Twin Trails Drive to the Community Plan boundary to its ultimate classification as a Six-Lane Primary Arterial to the satisfaction of the City Engineer. This would include the restriping of the temporary striping on Black Mountain Road overpass at SR 56 to provide three (3) thru lanes in the northbound direction, to the satisfaction of the City Engineer.

**Tra-6 Black Mountain Road/ Park Village Road**

Prior to issuance of the first building permit, the owner/permittee shall provide a fair share contribution (36.1 percent) toward the unfunded portion of *Rancho Peñasquitos PFFP Project No. T-2D* (corresponding *Black Mountain Ranch PFFP Project No. T-57, Pacific Highlands Ranch PFFP Project No. T-11.1*) to widen Black Mountain Road from Twin Trails Drive to the Community Plan boundary to its ultimate classification as a Six-Lane Primary Arterial, to the satisfaction of the City Engineer.

**Tra-7 Black Mountain Rd from SR-56 Eastbound Ramps to Park Village Road**

Prior to issuance of the first building permit, the owner/permittee shall provide a fair share contribution (35.9 percent) toward the unfunded portion of *Rancho Peñasquitos PFFP Project No. T-2D* (corresponding *Black Mountain Ranch PFFP Project No. T-57, Pacific Highlands Ranch PFFP Project No. T-11.1*) to widen Black Mountain Road from Twin Trails Drive to the Community Plan boundary to its ultimate classification as a six-lane primary arterial, to the satisfaction of the City Engineer.

**Tra-8 Black Mountain Rd from Park Village Rd to Mercy Rd**

Prior to issuance of the first building permit, the owner/permittee shall provide a fair share contribution (37.4 percent) toward the unfunded portion of *Rancho Peñasquitos PFFP Project No. T-2D* (corresponding *Black Mountain Ranch PFFP Project No. T-57, Pacific Highlands Ranch PFFP Project No. T-11.1*) to widen Black Mountain Road from Twin Trails Drive to the Community Plan boundary to its ultimate classification as a six-lane primary arterial, to the satisfaction of the City Engineer.

**Tra-9 SR-56 from Carmel Valley Road to Black Mountain Road (Eastbound and Westbound)**

Prior to issuance of the first building permit, the owner/permittee shall pay FBA fees toward the construction of the *Torrey Highlands PFFP Project No. T-1.2B* to expand SR-56 from I-5 to I-15 to a six-lane freeway, to the satisfaction of the City Engineer.

## **BIOLOGICAL RESOURCES**

### ***Bio-1 Biological Resource Protection During Construction***

#### **I. Prior to Construction**

- A. **Biologist Verification:** The owner/permittee shall provide a letter to the City's Mitigation Monitoring Coordination 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 pre-construction 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 Mitigation Monitoring Coordination 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, 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/Mitigation Monitoring Coordination. 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 Mitigation Monitoring Coordination and referenced in the construction documents.
- E. **Resource Delineation:** Prior to construction activities including the erection of any permanent fencing (e.g., around the vernal pool preserves adjacent to the project), 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 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. Temporary construction fencing shall be removed upon construction completion.

- F. **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 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 pre-construction 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 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. The Qualified Biologist shall monitor, as is feasible, for the presence of sensitive animals species and shall, if practicable, direct or move these animals out of harm's way (i.e., to a location of suitable habitat outside the impact footprint).
- B. **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/Mitigation Monitoring Coordination within 30 days of construction completion.

**Bio-2 Sensitive Natural Communities**

**I. Vernal Pools and Road Pools**

Prior to the issuance of the first construction and/or grading permit, impacts to vernal pools and road pools shall be mitigated through off-site creation of vernal pool habitat in accordance with a vernal pool mitigation plan approved by the City, USFWS, and CDFW. The mitigation shall occur at a 3:1 ratio. Vernal/road pool impacts and their associated mitigation requirements for both the Mixed-Use Development and Public Road project components are presented together in Table 5.3-6, *Mitigation for Impacts to Vernal/Road Pools*. The mitigation for the Mixed-Use vernal pool impacts and the Public Road vernal pool and road pool impacts is proposed to occur at a City-owned parcel on Del Mar Mesa (see Figure 7, *Vernal Pool Mitigation Site*, in Appendix C1). In total, the project requires 0.123 acre of vernal pool mitigation. The proposed effort on the City-owned parcel would, however, provide 0.193 acre of created vernal pool habitat. This would leave approximately 0.070 acre of surplus vernal pool surface area that could be used by the City as mitigation for other City projects. Additionally, the Applicant will enhance an existing vernal pool (0.021 acre) as part of the overall effort on the City-owned parcel. The creation of surplus vernal pool habitat and enhancement of the existing vernal pool are being conducted to compensate for the use of City-owned land for private (i.e., the Mixed-Use) mitigation. The final mitigation, however, shall be determined through consultation with the City and USFWS, and a final vernal pool mitigation plan shall be submitted to the USFWS for approval within 120 days of the Applicant receiving the final Biological Opinion.

Location and Pool Type	Impacts (acre)	Mitigation	
		Ratio	Required (acre)
<b>Mixed-Use Development</b>			
Vernal Pool	0.022	3:1	0.066
<b>Subtotal</b>	<b>0.022</b>	-	<b>0.066</b>
<b>Public Roads<sup>1</sup></b>			
Vernal Pool	0.016	3:1	0.048
Road Pool	0.003	3:1	0.009
<b>Subtotal</b>	<b>0.019</b>	-	<b>0.057</b>
<b>TOTAL</b>	<b>0.041</b>		<b>0.123</b>

Source: Alden Environmental, Inc. 2017

<sup>1</sup> There would be no impacts to vernal/road pools from the construction of Carmel Mountain Road.

Upon completion of the mitigation, there shall be a five-year maintenance and monitoring period to ensure successful habitat creation followed by implementation of a long-term habitat management plan approved by the City. The mitigation shall, at a minimum, replace the functions and services lost through impacts to vernal and road pools from the project. All of the pools also shall support reproducing populations of San Diego fairy shrimp. With the completed mitigation, it is expected that functions and services (water filtration, sensitive wildlife and plant habitat, etc.) would be greater in the created pools than in the impacted pools by the end of the five-year mitigation effort. This realization of target functions and values shall be documented by conducting quantitative and qualitative analyses throughout the five-year monitoring period.

Long-term management (after the five-year maintenance and monitoring period) and funding of the City roadway portion of the vernal pool mitigation area would be the responsibility of the City. Long-term management and funding of the Mixed-Use vernal pool mitigation area would be the responsibility of owner/permittee to prepare a Property Analysis Record and provide an endowment to ensure adequate long-term funding for the Mixed-Use vernal pool mitigation component. Long-term management and funding of the surplus pools would be determined through consultation between the City and owner/permittee. Actual management activities would be implemented by the City and/or a third-party entity approved and authorized by the City. All mitigation for impacts to vernal pools and road pools (and San Diego fairy shrimp) shall occur as defined in the final permits/authorizations to be issued by the Corps, USFWS, and City prior to issuance of grading permits.

#### **Other Wetland/Riparian Areas**

The northern portion of Camino Del Sur would impact a total of 0.5 acre of wetland/riparian habitat (other than vernal pools, i.e., southern willow scrub, mule fat scrub, and freshwater marsh; Table 5.3-1). Prior to the issuance of the first construction and/or grading permit, mitigation for these impacts shall be met through off-site creation of wetland habitat at a 3:1 ratio (1.5 acres of mitigation for these impacts). The proposed mitigation site is located along the creek in McGonigle Canyon approximately 1.5 miles northwest of the project (See Figure 8, *Off-Site Wetland/ Riparian Mitigation Site*, in Appendix C1). The mitigation site supports existing wetland habitat along the creek and is located within the MHPA. The mitigation shall include widening the creek to the south in an area that has been filled and used for agricultural purposes. The mitigation area shall be constructed specifically for the Camino Del Sur portion of the City's roadway project component and shall not be a part of any current or proposed future mitigation banking agreement. The total acreage to be created at this location is 1.58 acres, which includes the 1.5 acres required for this wetland/riparian habitat mitigation plus an additional 0.08 acre required for impacts to non-wetland streambeds as described in Mitigation Measure Bio-8, *Jurisdictional Areas*.

Wetland/riparian habitat shall be created by expanding the width of the existing creek and creating a mosaic of site-appropriate wetland/riparian associated habitats through the installation of a broad species mix. The habitats to become established are anticipated to range from freshwater marsh adjacent to the central portions of the channel that experience steady water flows, to riparian scrub and forest habitats along the periphery of the wetland mitigation area. As with the vernal pool mitigation discussed above, the wetland mitigation effort shall



include a five-year maintenance and monitoring period, a long-term HMP, and an endowment to provide long-term management funding. See Section 7.1.2, *Mitigation for Impacts to Other Jurisdictional/Wetland Areas*, in Appendix C1 for additional details.

All mitigation for the impacts shall occur as defined in the final permits/authorizations to be issued by the Corps, CDFW, USFWS, and City prior to issuance of grading permits.

**Bio-3 Upland Vegetation Communities**

Prior to the issuance of the first construction and/or grading permit, mitigation for direct impacts to 61.2 acres of sensitive upland vegetation communities and Nuttall's scrub oak shall be accomplished through preservation of a minimum of 51.8 acres of suitable habitat/mitigation credit. The impacts and potential mitigation ratios and acreages are presented in Table 5.3-7, *Mitigation for Impacts to Sensitive Upland Vegetation Communities from the Mixed-Use Development*, and Table 5.3-8, *Mitigation for Impacts to Sensitive Upland Vegetation Communities from the Public Roads* and are based on Table 3, Upland Mitigation Ratios, of the City's Biology Guidelines (and the Torrey Highlands Subarea Plan [THSP] for impacts on the Mixed-Use Development site).

The following acquisition and preservation of mitigation in the THSP MHPA and/or purchase of credits from mitigation banks shall be provided for project impacts to upland habitats in accordance with the City's Biology Guidelines.

Vegetation Community	Impacts <sup>1</sup> (acres)	Mitigation <sup>1</sup>		
		Mitigation Ratio (acre)	Required Mitigation Acreage	Avoided
<b>Tier II</b>				
Diegan coastal sage scrub	7.7	2:1 <sup>2</sup>	15.4	2.4
Diegan coastal sage scrub-disturbed	0.3	2:1 <sup>2</sup>	0.6	-
Diegan coastal sage scrub-southern mixed chaparral ecotone	1.3	2:1 <sup>2</sup>	2.6	-
<b>Subtotal</b>	<b>9.3</b>	-	<b>18.6</b>	<b>2.4</b>
<b>Tier IIIA</b>				
Southern mixed chaparral	<0.1	0.5:1	0.1	0.1
Chamise chaparral	2.2	0.5:1	1.1	-
Chamise chaparral-disturbed	3.4	0.5:1	1.7	-
<b>Subtotal</b>	<b>5.6</b>	-	<b>2.9</b>	<b>0.1</b>
<b>Tier IIIB</b>				

Non-native grassland	16.5	0.5:1	8.3	0.5
<b>Subtotal</b>	<b>16.5</b>	-	<b>11.2</b>	<b>0.5</b>
<b>TOTAL</b>	<b>31.4</b>	--	<b>32.7</b>	<b>3.0</b>

Source: Alden Environmental, Inc. 2017

<sup>1</sup>Impact is outside the MHPA, and mitigation is within the MHPA.

<sup>2</sup>Since the project proposes to mitigate for impacts to Diegan coastal sage scrub communities outside the THSP MHPA, the ratio has been doubled to 2:1.

<b>Table 5.3-8 MITIGATION FOR IMPACTS TO SENSITIVE UPLAND VEGETATION COMMUNITIES FROM THE PUBLIC ROADS</b>					
Vegetation Community <sup>1</sup>	Impacts		Mitigation		
	Camino Del Sur	Carmel Mountain Road	Total Impact (acre)	Ratio <sup>2</sup> (acre)	Required Mitigation
<b>Tier I</b>					
Scrub oak chaparral	1.7	-	1.7	1:1	1.7 <sup>3</sup>
<b>Subtotal</b>	<b>1.7</b>	-	<b>1.7</b>	-	<b>1.7</b>
<b>Tier II</b>					
Diegan coastal sage scrub	3.5	-	3.5	1:1	3.5
Diegan coastal sage scrub-within MHPA	0.3	-	0.3	1:1	0.3
Diegan coastal sage scrub-disturbed	0.2	-	0.2	1:1	0.2
Diegan coastal sage scrub-southern mixed chaparral ecotone	0.4	-	0.4	1:1	0.4
Diegan coastal sage scrub-southern mixed chaparral ecotone-within MHPA	0.1	-	0.1	1:1	0.1
<b>Subtotal</b>	<b>4.5</b>	-	<b>4.5</b>	-	<b>4.5</b>
<b>Tier IIIA</b>					
Southern mixed chaparral	6.2	-	6.2	0.5:1	3.1
Southern mixed chaparral-within MHPA	1.8	-	1.8	1:1	1.8
Chamise chaparral	6.3	1.1	7.4	0.5:1	3.7
Chamise chaparral-within MHPA	0.2	-	0.2	1:1	0.2
Chamise chaparral-disturbed	1.1	1.0	2.1	0.5:1	1.1
<b>Subtotal</b>	<b>15.6</b>	<b>2.1</b>	<b>17.7</b>	-	<b>9.9</b>
<b>Tier IIIB</b>					
Non-native grassland	3.8	2.1	5.9	0.5:1	3.0
<b>Subtotal</b>	<b>3.8</b>	<b>2.1</b>	<b>5.9</b>	-	<b>3.0</b>
<b>TOTAL</b>	<b>25.6</b>	<b>4.2</b>	<b>29.8</b>	--	<b>19.1</b>

Source: Alden Environmental, Inc. 2017

<sup>1</sup>Impact is outside the MHPA unless otherwise stated.

<sup>2</sup>The ratios are for mitigation inside the MHPA.

<sup>3</sup>Habitat mitigation would also compensate for impacts to Nuttall's scrub oak.

- The Applicant shall meet the 32.7-acre upland mitigation requirement for the Mixed-Use Development through the assignment of credits in the Deer Canyon Mitigation Bank and/or the acquisition of land available at the Crescent Heights site owned by Pardee Homes and/or the acquisition of land available in the East Elliot community. Any MHPA land acquired from Pardee Homes or others for project mitigation would be dedicated in fee title to the City of San Diego. Conveyance of any land in fee title to the City shall require approval from the Park and Recreation Department Open Space Division Deputy Director. Final mitigation compliance may be a combination of these three options; would be dependent upon credit/land availability; and would be subject to City and wildlife agency approval prior to issuance of the first grading permit.
- Mitigation for Camino Del Sur impacts to scrub oak chaparral (a Tier I habitat) shall be met through use of 1.7 acre of credits in the Deer Canyon Mitigation Bank in the MHPA west of the project that have been allocated by Mr. Keith Rhodes for the "Rhodes Crossing Project." The Deer Canyon Mitigation Bank has 13.81 acres of remaining Tier I mitigation credits that were previously allocated and currently owned by Mr. Keith Rhodes.
- The remaining 17.4 acres of mitigation for Camino Del Sur and Carmel Mountain Road impacts to Tier II and Tier III habitats shall occur at the Anderprizes mitigation site (in the City of San Diego) in accordance with the Conservation Credit Agreement among SANDAG and other signatories for regional transportation projects and local streets and roads (SANDAG et al. 2014). The Anderprizes mitigation site has 5.76 acres of Tier I and 24.88 acres of Tiers II and III mitigation credits available (SANDAG et al. 2014).

#### ***Bio-4 San Diego Fairy Shrimp***

Prior to the issuance of the first construction and/or grading permit, mitigation for direct impacts to San Diego fairy shrimp and direct impacts to San Diego fairy shrimp designated Critical Habitat shall be determined through consultation with the USFWS through a Section 7 Consultation with the Corps and addressed in an amended and/or new Biological Opinion.

Mitigation for impacts to the San Diego fairy shrimp shall be met through vernal pool habitat creation in the off-site mitigation identified in Mitigation Measure Bio-2, *Sensitive Natural Communities*. All of the created pools shall support reproducing populations of San Diego fairy shrimp as part of the vernal pool mitigation effort. The mitigation shall be conducted in accordance with a mitigation plan to be approved by the USFWS and City prior to issuance of grading permits.

The following measures shall also be implemented to protect San Diego fairy shrimp and its habitat in the off-site vernal pool preserves adjacent to the project. Additional measures to protect San Diego fairy shrimp and its habitat in the off-site vernal pool preserves adjacent to the project are listed below in Mitigation Measure Bio-8, *Jurisdictional Areas*.

- A Biological Monitor shall be on site full time during initial grading near the vernal pool preserves and throughout the remaining grading/excavation activities at a minimum frequency of three times per week to ensure that grading limits are observed.

- The Biological Monitor will periodically monitor the vernal pool preserves and adjacent habitats for excessive amounts of dust (i.e., if a visible film of dust is observed on the surface or on adjacent plants) and will recommend remedial measures to address dust control if necessary.
- No staging/storage areas for equipment and materials shall be located within or adjacent to the vernal pool preserves; no equipment maintenance shall be conducted within or near the vernal pool preserves.
- 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 vernal pool preserves.
- 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.
- The Applicant shall submit documentation to the USFWS prior to the initiation of project construction demonstrating that the distribution of San Diego fairy shrimp has not changed from the baseline (i.e., the number and distribution of pools occupied by San Diego fairy shrimp has not changed from the condition described in the amended or new Biological Opinion). Pools already occupied do not need to be re-surveyed; however, pools and project areas supporting suitable habitat conditions shall be re-assessed and re-surveyed to protocol standards.
- A Qualified Biologist approved by the USFWS and the City shall oversee installation of fencing and erosion control measures within or up-slope of off-site vernal pool preserves a minimum of once per week and daily during all rain events to ensure that any breaks in the fence or erosion control measures are repaired immediately.
- The Applicant shall submit to the USFWS for approval, at least 30 days prior to initiating project grading, the final plans for initial clearing and grubbing of sensitive habitat and project construction. These final plans shall include photographs that show the fenced limits of impacts and the fenced limits of all areas to be avoided. If work occurs beyond the fenced or demarcated limits of impact, all work will cease until the problem has been remedied to the satisfaction of the USFWS.
- The Qualified Biologist shall be on the project site during clearing and grubbing of suitable habitat for the San Diego fairy shrimp, including all Critical Habitat, and any occupied habitat within 200 feet of the grading limits. The Qualified Biologist shall conduct weekly site visits during rough grading to ensure that the grading limits have been respected and compliance with all mitigation has been achieved. The Qualified Biologist shall be knowledgeable of vernal pool species. The Applicant shall submit the Qualified Biologist's name, address, telephone number, and work schedule on the project to the USFWS and the City at least seven days prior to initiating impacts.

- The Qualified Biologist shall halt work, if necessary, and confer with the USFWS to ensure the proper implementation of San Diego fairy shrimp and habitat protection measures. The Qualified Biologist shall also report any violation to the USFWS within 24 hours of its occurrence.
- The Qualified Biologist shall implement a contractor training program to ensure compliance with the mitigation measures to avoid and minimize incidental take of San Diego fairy shrimp.
- The Qualified Biologist shall submit:
  - Monthly letter reports (including photographs of impacted areas) to the USFWS during project construction within 200 feet of avoided San Diego fairy shrimp habitat. The monthly reports shall document that authorized impacts were not exceeded, and general compliance with all conditions was met.
  - A final report to the USFWS within 60 days of project completion that includes as-built construction drawings with an overlay of pools that were impacted or remain off site, photographs of the off-site pools, and other relevant information documenting that incidental take was not exceeded and that general compliance with the project, including all mitigation measures, was achieved.

***Bio-5 Coastal California Gnatcatcher***

Prior to the issuance of the first construction and/or grading permit, direct impacts to the coastal California gnatcatcher shall be mitigated through acquisition and preservation of Diegan coastal sage scrub habitat in accordance with Mitigation Measure Bio-3. Potential indirect impacts to the coastal California gnatcatcher from noise shall be mitigated through the implementation of Mitigation Measure LU-1.

***Bio-6 San Diego Black-tailed Jackrabbit and Sensitive Animal Species with Moderate to High Potential to Occur***

Potential direct impacts to the San Diego black-tailed jackrabbit, silvery legless lizard, Coronado skink, Bell's sage sparrow, California horned lark, Dulzura pocket mouse, and northwestern San Diego pocket mouse shall be mitigated through protection during construction required by Mitigation Measure Bio-1 and acquisition and preservation of habitat in accordance with Mitigation Measure Bio-3.

Additionally, all steep-walled trenches or excavations created during project construction shall be covered, except when being actively used, to prevent entrapment of wildlife (e.g., reptiles and small mammals). If trenches cannot be covered, exclusion fencing shall be installed around the trench or excavation. Open trenches or other excavations shall be inspected by a qualified biologist a minimum of three times per day and immediately before backfilling. Any entrapped wildlife shall be removed and relocated to a safe location by the qualified biologist. Also, if any native, vertebrate species is found in the path of construction, the biologist shall make every effort to relocate it to a safe location. Exclusionary devices, as

necessary, shall be erected to prevent the migration into or the return of the species into the work area.

**Bio-7 Raptor Foraging Habitat**

Prior to the issuance of the first construction and/or grading permit, impacts to raptor foraging habitat shall be mitigated through acquisition and preservation of non-native grassland, in accordance with Mitigation Measure Bio-3.

**Bio-8 Jurisdictional Areas**

Prior to the issuance of the first construction and/or grading permit, impacts to 0.05 acre of non-wetland, federal and State jurisdictional streambeds (non-City jurisdictional) from the southern portion of Camino Del Sur shall be mitigated through the use of credits at the El Cuervo Norte Wetland Mitigation Site in Los Peñasquitos Canyon Preserve. The City pursued and completed the El Cuervo Norte habitat restoration effort in order to meet agency jurisdictional mitigation requirements for several City projects, including Camino Del Sur. A total of 0.08 acre of creation credits and 0.01 acre of enhancement credit was set aside for Camino Del Sur (south) impacts (i.e., from Carmel Mountain Road to 1,600 feet North of Park Village Road, which is the same area analyzed in this report). The acreage set aside was based on the impacts from Camino Del Sur (four lanes; 0.07 acre) analyzed in the Final EIR for Camino Del Sur (City 2005). The proposed southern extension of Camino Del Sur as part of the project would be two lanes. The mitigation site received final sign-off from the Corps on July 7, 2010 following the five-year maintenance and monitoring period.

Given that the El Cuervo project has been completed well in advance of the project impacts (no temporal loss), and that the current project impacts (0.05 acre) are reduced from those approved previously (0.07 acre), a 1:1 mitigation ratio is considered appropriate. The 0.03 acre of surplus creation credit and 0.01 acre of remaining enhancement credit available at El Cuervo Norte would be available for other City projects (e.g., Camino Del Sur [north]). The suitability of this previously completed mitigation effort shall be determined and verified by the Corps, CDFW, and RWQCB as part of the jurisdictional permit process.

Camino Del Sur (north) would impact 0.04 acre of non-wetland, federal and State jurisdictional streambed (non-City jurisdictional). Mitigation for this impact shall occur at a 2:1 ratio (0.08 acre) through off-site creation of wetland/riparian habitat along the creek in McGonigle Canyon as described in Mitigation Measure Bio-2. A total of 1.58 acres of wetland habitat shall be created at this location for Camino Del Sur (north) impacts to wetlands (1.5 acres created; see Mitigation Measure Bio-2) and non-wetland streambeds (0.08 acre created per this measure, Mitigation Measure Bio-8).

The following measure is also required.

- Prior to any construction-related activities that would impact jurisdictional areas (including earthwork and fencing), the Applicant shall schedule a pre-construction meeting with Mitigation Monitoring Coordination and submit to the Development

Services Department written documentation (including table and graphics) demonstrating implementation of the following required mitigation, should the applicable resources be impacted in the proposed phase of work. The documentation shall be reviewed at the pre-construction meeting for that phase of work. The Applicant shall provide evidence<sup>1</sup> of the following to the City Manager:

- A. Compliance with the Corps Section 404 permit;
- B. Compliance with the Regional Water Quality Control Board Section 401 Water Quality certification; and,
- C. Compliance with the CDFW Section 1601-1603 SAA.

***Bio-9 Vernal Pool Protection During and After Construction***

Construction monitoring shall be conducted throughout the rainy season by a Qualified Biologist during grading of the public roads in the vicinity of the off-site vernal pool preserves and for the 3 years following road construction. Monitoring shall consist of observing the hydrological characteristics (i.e., ponding) of the off-site vernal pool preserves during and post-construction. In the event that sufficient rainfall to demonstrate adequate ponding does not occur during the 3 years following project construction, monitoring shall continue in 1-year increments, to a maximum of 5 years after the completion of road construction. A monitoring report shall be submitted to the USFWS by September 1 following each monitoring season. If monitoring within the prescribed monitoring period detects impacts to the ponding of the off-site vernal pools from construction and/or operation of the project, the project applicant shall implement remedial measures to eliminate and repair observed hydrologic changes, to the satisfaction of the USFWS and CDFW.

**HISTORICAL RESOURCES**

***Hist-1*** The following measures shall be implemented prior to issuance of construction permits, prior to the start of construction, during construction and after construction within 100 feet of the two previously recorded sites (i.e., SDI-13078 and SDI-13077H) on the Merge 56 project site and the right-of-way for Camino Del Sur and within the eastern trail alignment to Darkwood Canyon:

**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.

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<sup>1</sup> Evidence shall include either copies of permits issued, letter of resolutions issued by the responsible agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the City Manager.

- 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-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 1-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 (only 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 (CSVR). The CSVRs shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring**

**Completion**), and in the case of ANY discoveries. The RE shall forward copies to 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 Parks 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 WOULD ALSO REQUIRE**

**THE INCLUSION OF ALL PRIOR ARCHAEOLOGICAL WORK CONDUCTED WHERE MATERIALS WERE COLLECTED IN 1996 BY PIGNIOLO, 2003 BY BFSA AND 2012 BY ASM. REFER TO HISTORICAL RESOURCES (CULTURAL RESOURCES/CURATION AND FINAL REPORT PREPARATION OF PREVIOUS ARCHAEOLOGICAL WORK CONDUCTED MMRP CONDITION).** 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.

#### **PALEONTOLOGICAL RESOURCES**

**Paleo-1** The following mitigation measures contain project conditions that have been developed by the City to reduce potential paleontological impacts to below a level of significance. These requirements comprise a comprehensive program to address potential impacts to moderate to high-sensitivity paleontological resources associated with the Linda Vista Formation, Mission Valley Formation, Stadium Conglomerate and Friars Formation, and are consistent with standard programs employed at other sites in the City. Implementation of these mitigation measures would allow preservation and future scientific study of any important paleontological resources encountered, thereby reducing impacts to below a level of significance.

#### **I. Prior to Permit Issuance**

- A. Entitlements Plan Check
  1. Prior to issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits or a Notice to Proceed for Subdivisions, but prior to the first preconstruction meeting, whichever is applicable, the Assistant

Deputy Director (ADD) Environmental designee shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

- B. Letters of Qualification have been submitted to ADD
  - 1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.
  - 2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.
  - 3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

## **II. Prior to Start of Construction**

- A. Verification of Records Search
  - 1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
  - 2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.
- B. PI Shall Attend Precon Meetings
  - 1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.
    - a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
  - 2. Identify Areas to be Monitored - Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
  - 3. When Monitoring Will Occur

- a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
- b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

### III. During Construction

- A. Monitor Shall be Present During Grading/Excavation/Trenching
  1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities such as in the case of a potential safety concern within the area being monitored. In certain circumstances OSHA safety requirements may necessitate modification of the PME.**
  2. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.
  3. The monitor shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
- B. Discovery Notification Process
  1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
  2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
  3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.
- C. Determination of Significance
  1. The PI shall evaluate the significance of the resource.
    - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating



whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.

- b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
- c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.
- d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

#### **IV. Night and/or Weekend Work**

- A. If night and/or weekend work is included in the contract
  1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the preconstruction 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 on the next business day.
    - b. Discoveries - All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.
    - c. Potentially Significant Discoveries - If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
    - d. The PI shall immediately contact MMC, or by 8AM on the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night work becomes necessary during the course of construction
  1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
  2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

#### **V. Post Construction**

- A. Preparation and Submittal of Draft Monitoring Report
  1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Paleontological Guidelines

which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring,

- a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.
  - b. Recording Sites with the San Diego Natural History Museum  
The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.
2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
  3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
  4. MMC shall provide written verification to the PI of the approved report.
  5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
- B. Handling of Fossil Remains
1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
  2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate
- C. Curation of fossil remains: Deed of Gift and Acceptance Verification
1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.
  2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
- D. Final Monitoring Report(s)
1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
  2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

Passed by the Council of The City of San Diego on MAY 22 2018, 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"/>

Date of final passage MAY 22 2018

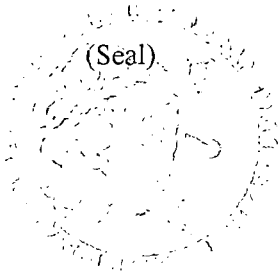
**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

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.

By Hinda Irwin, Deputy



Office of the City Clerk, San Diego, California  
Resolution Number R- 311775