

RESOLUTION NUMBER R- **315070**

DATE OF FINAL PASSAGE **AUG 04 2023**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO ADOPTING MITIGATED NEGATIVE
DECLARATION NO. 631240/STATE CLEARINGHOUSE
(SCH) NO. 2022040642 AND ADOPTING THE MITIGATION,
MONITORING, AND REPORTING PROGRAM FOR THE
BELLA MAR APARTMENTS - PROJECT NO. 631240.

WHEREAS, on July 19, 2019, RTA PHAIR/HOLLISTER, LLC, a Delaware Limited Liability Company, submitted an application with the City of San Diego for amendments to the General Plan, Otay Mesa-Nestor Community Plan, and Local Coastal Program; Rezone; and amendments to the San Diego Municipal Code Coastal Overlay Zone Certification Map for the Bella Mar project (Project); and

WHEREAS, on March 30, 2023, the Planning Commission of the City of San Diego (Planning Commission) held a public hearing for the purpose of considering and recommending to the Council of the City of San Diego the adoption of the Mitigated Negative Declaration (MND), adoption of a Mitigation, Monitoring and Reporting Program (MMRP), approval of the amendments to the General Plan, Otay Mesa-Nestor Community Plan and Local Coastal Program, adoption of an amendment to the San Diego Municipal Code and Coastal Overlay Zone Certification Map Drawing No. 730.1 to include Coastal Overlay Zone Certification Map Drawing No. C-1028, and a rezone; and

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

WHEREAS, the issue was heard by the Council on July 25, 2023; and

WHEREAS, the City Council considered the issues discussed in Mitigated Negative Declaration No. 631240/State Clearinghouse (SCH) No. 2022040642 (Declaration) prepared for this Project; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT RESOLVED, by the City Council that it is certified that the Declaration has been completed in compliance with the California Environmental Quality Act of 1970 (CEQA) (California Public Resources Code section 21000, *et seq.*), as amended, and the State CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, section 15000, *et seq.*), that the Declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said Declaration, together with any comments received during the public review process, has been reviewed and considered by the Council in connection with the approval of the Project.

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

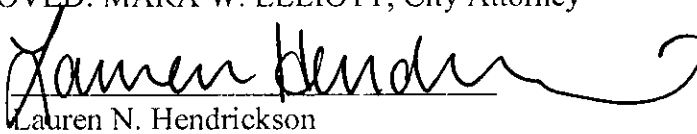
BE IT FURTHER RESOLVED, that pursuant to CEQA section 21081.6, the Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the Project as required by this Council in order to mitigate or avoid significant effects on the environment, which is attached hereto as Exhibit A.

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

BE IT FURTHER RESOLVED, that the office of the City Clerk is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project after final passage of O- 21718 rezoning the site from the existing Agriculture Residential (AR-1-2) and Open Space (OF-1-1) Zones to the RM-2-5 (Residential - Multiple Unit) Zone.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Lauren N. Hendrickson
Deputy City Attorney

LNH:cm
June 6, 2023
Or.Dept: DSD
Doc. No. 3325008

Attachment: Mitigation, Monitoring, and Reporting Program

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 25 2023

DIANA J.S. FUENTES
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 8/4/23
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

AMENDMENTS TO THE GENERAL PLAN, OTAY MESA-NESTOR COMMUNITY PLAN, AND LOCAL COASTAL PROGRAM NO. 2609704; REZONE NO. 2278306;

BELLA MAR APARTMENTS

PROJECT NO. 631240/STATE CLEARINGHOUSE NO. 2022040642

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA, 92101. All mitigation measures contained in the Mitigated Negative Declaration No 631240/State Clearinghouse (SCH) No. 2022040642 shall be made conditions of the amendments to the General Plan, Otay Mesa-Nestor Community Plan, and Local Coastal Program No. 2609704; Rezone No. 2278306; and of the Bella Mar Apartments project (Project) as may be further described below.

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

1. Prior to the issuance of a Notice To Proceed (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 Mitigation, Monitoring and Reporting Program (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:

<https://www.sandiego.gov/development-services/forms-publications/design-guidelines-templates>
5. 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: Biologist, Archaeological monitor and Native American monitor.

Note: Failure of all responsible Permit Holder's representatives and consultants to attend shall require an additional meeting with all parties present.

CONTACT INFORMATION:

- a) The PRIMARY POINT OF CONTACT is the **RE** at the **Field Engineering Division 858-627-3200.**
 - b) For Clarification of ENVIRONMENTAL REQUIREMENTS, it is also required to call **RE and MMC at 858-627-3360.**
2. **MMRP COMPLIANCE:** This Project, Project Tracking System (PTS) Number 631240 and/or Environmental Document Number 631240, 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:

Regional Water Quality Control Board; Federal Emergency Management Agency; California Department of Fish and Wildlife; United States Fish and Wildlife Service; Coastal Commission.

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 DSD Director or City Manager, additional surety instruments or bonds from the private Permit Holder may be required to ensure the long-term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

5. **OTHER SUBMITTALS AND INSPECTIONS:** The Permit Holder/Owner's representative shall submit all required documentation, verification letters, and requests for all associated inspections to the RE and MMC for approval per the following schedule:

Document Submittal/Inspection Checklist		
Issue Area	Document Submittal	Associated Inspection/Approvals/Notes
General	Consultant Qualification Letters	Prior to Preconstruction Meeting
General	Consultant Construction Monitoring Exhibits	Prior to or at Preconstruction Meeting
Land Use - MSCP	Land Use Adjacency Issues CVSRs	Land Use Adjacency Issue Site Observations
Land Use	Noise Attenuation/Interior Noise Study	Prior to occupation
Biology	Biologist Limit of Work Verification	Limit of Work Inspection
Biology	Biological Monitoring	Biology/Habitat Restoration Inspection
Archaeology	Archaeology/ Monitoring Reports	Archaeology Site Observation
Tribal Cultural Resources	Native American monitoring reports	Tribal Cultural Site Observation
Waste Management	Waste Management Reports	Waste Management Inspections
Bond Release	Request for Bond Release Letter	Final MMRP Inspections Prior to Bond Release Letter

C. SPECIFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS

BIOLOGICAL RESOURCES

Mitigation Measure Bio-1A – PROTECTIONS DURING CONSTRUCTION

I. Prior to Construction

- A. Biologist Verification:** The owner/permittee shall provide a letter to the City MMC section stating that a Project Biologist (Qualified Biologist) as defined in the City's Biological Guidelines (2018), has been retained to implement the project's biological monitoring program. The letter shall include the names and contact information of all persons involved in the biological monitoring of the project.
- B. Preconstruction Meeting:** The Qualified Biologist shall attend the preconstruction meeting, discuss the project's biological monitoring program, and arrange to perform any follow up mitigation measures and reporting including site-specific monitoring, restoration or revegetation, and additional fauna/flora surveys/salvage.
- C. Biological Documents:** The Qualified Biologist shall submit all required documentation to Mitigation Monitoring Coordination (MMC) verifying that any special mitigation reports including but not limited to, maps, plans, surveys,

survey timelines, or buffers are completed or scheduled per the City's Biology Guidelines, Multiple Species Conservation Program (MSCP), Environmentally Sensitive Lands (ESL) Ordinance, project permit conditions; California Environmental Quality Act (CEQA); endangered species acts (ESAs); and/or other local, state, or federal requirements.

- D. Biological Construction Mitigation/Monitoring Exhibit (BCME):** The Qualified Biologist shall present a BCME, which shall include the biological documents in "C" above. In addition, it shall include restoration/revegetation plans, plant salvage/relocation requirements (coastal cactus wren plant salvage, western Burrowing Owl (BUOW) exclusions, etc.), BUOW and least Bell's vireo or other wildlife surveys/survey schedules (including BUOW and least Bell's vireo- nesting and U.S. Fish and Wildlife [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 (ADD)/MMC. The BCME shall include a site plan, written and graphic depiction of the project's biological mitigation/monitoring program, and a schedule. The BCME shall be approved by MMC and referenced in the construction documents.
- E. Resource Delineation:** Prior to construction activities, the Qualified Biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance adjacent to sensitive biological habitats and verify compliance with any other project conditions as shown on the BCME. This phase shall include flagging plant specimens and delimiting buffers to protect sensitive biological resources (e.g., habitats/flora and fauna species, including nesting BUOW and least Bell's vireo birds) during construction. Appropriate steps/care should be taken to minimize attraction of nest predators to the site.
- 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).

II. During Construction

- A. Monitoring:** All construction (including access/staging areas) shall be restricted to areas previously identified, proposed for development/staging, or previously disturbed as shown on "Exhibit A" and/or the BCME. The Qualified Biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas, or cause other similar damage, and that the work plan has been amended to accommodate any sensitive species located during the preconstruction surveys. In addition, the Qualified Biologist shall document field activity via the Consultant Site Visit Record. The Consultant Site Visit Record shall be e-

mailed to the MMC on the first day of monitoring, the first week of each month, the last day of monitoring, and immediately in the case of any undocumented condition or discovery.

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

III. Post Construction Measures

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

MITIGATION MEASURE BIO-1B – AVIAN PROTECTION MITIGATION

To avoid any direct impacts to BUOW and least Bell's vireo, and any avian species that is listed, candidate, sensitive, or special status species in the MSCP, removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to August 31 / March 15 and September 15). If removal of habitat in the proposed area of disturbance must occur during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of (BUOW and least Bell's vireo) on the proposed area of disturbance. The pre-construction survey shall be conducted within 40 three calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results of the pre-construction survey to City DSD for review and approval prior to initiating any construction activities. If BUOW and least Bell's vireo are detected, a letter report in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e., appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities is avoided. The report shall be submitted to the City for review and approval and implemented to the satisfaction of the City. The City's MMC Section and Biologist shall verify and approve that all measures identified in the report are in place prior to and/or during construction.

MITIGATION MEASURE BIO-2 – BURROWING OWL

PRECONSTRUCTION SURVEY ELEMENT

Prior to Permit or Notice to Proceed Issuance:

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

Prior to Start of Construction:

1. The Applicant Department or Permit Holder and Qualified Biologist must ensure that initial pre-construction/take avoidance surveys of the project "site" are completed between 14 and 30 days before initial construction activities, including brushing, clearing, grubbing, or grading of the project site; regardless of the time of the year. "Site" means the project site and the area within a radius of 450 feet of the project site. The report shall be submitted and approved by the Wildlife Agencies and/or City MSCP staff prior to construction or BUOW eviction(s) and shall include maps of the project site and BUOW locations on aerial photos.
2. The pre-construction survey shall follow the methods described in CDFG 2012, Staff Report-Appendix D
3. 24 hours prior to commencement of ground disturbing activities, the Qualified Biologist shall verify results of preconstruction/take avoidance surveys. Verification shall be provided to the City's MMC and MSCP Sections. If results of the preconstruction surveys have changed and BUOW are present in areas not previously identified, immediate notification to the City and Wildlife Agencies shall be provided prior to ground disturbing activities.

During Construction:

1. **Best Management Practices shall be employed as** BUOWs are known to use open pipes, culverts, excavated holes, and other burrow-like structures at construction sites. Legally permitted active construction projects which are BUOW occupied and have followed all protocol in this mitigation section, or sites within 450 feet of occupied BUOW areas, should undertake measures to discourage BUOWs from recolonizing previously occupied areas or colonizing new portions of the site. Such measures include, but are not limited to, ensuring that the ends of all pipes and culverts are covered when they are not being worked on, and covering rubble piles, dirt piles, ditches, and berms.
2. **On-going BUOW Detection:** If BUOWs or active burrows are not detected during the pre-construction surveys, Section "A" below shall be followed. If BUOWs or burrows are detected during the pre-construction surveys, Section "B" shall be followed. NEITHER THE MSCP SUBAREA PLAN NOR THIS MITIGATION SECTION ALLOWS FOR ANY BUOWs TO BE INJURED OR KILLED OUTSIDE OR WITHIN THE MHPA; in addition, IMPACTS TO BUOWs WITHIN THE MHPA MUST BE AVOIDED.

A. Post Survey Follow Up if Burrowing Owls and/or Signs of Active Natural or Artificial Burrows Are Not Detected During the Initial Pre-Construction Survey: Monitoring the site for new burrows is required using CDFG Staff Report 2012 Appendix D methods for the period following the -- initial pre-construction survey, until construction is scheduled to be complete and is complete (*NOTE - Using a projected completion date (that is amended if needed) will allow development of a monitoring schedule*).

- 1) If no active burrows are found but BUOWs are observed to occasionally (1-3 sightings) use the site for roosting or foraging, they should be allowed to do so with no changes in the construction or construction schedule.
- 2) If no active burrows are found but BUOWs are observed during follow up monitoring to repeatedly (four or more sightings) use the site for roosting or foraging, the City's MMC and MSCP Sections shall be notified and any portion of the site where owls have been observed and that has not been graded or otherwise disturbed shall be avoided until further notice.
- 3) If a BUOW begins using a burrow on the site at any time after the initial pre-construction survey, procedures described in Section B must be followed.
- 4) Any actions other than these require the approval of the City and the Wildlife Agencies.

B. Post Survey Follow Up if Burrowing Owls and/or Active Natural or Artificial Burrows are detected during the Initial Pre-Construction Survey:

Monitoring the site for new burrows is required using Appendix D CDFG 2012, Staff Report for the period following the initial pre-construction survey, until construction is scheduled to be complete and is complete (*NOTE - Using a projected completion date (that is amended if needed) will allow development of a monitoring schedule which adheres to the required number of surveys in the detection protocol*).

- 1) This section (B) applies only to sites (including biologically defined territory) wholly outside of the MHPA – **all direct and indirect impacts to BUOWs within the MHPA SHALL be avoided.**
- 2) If one or more BUOWs are using any burrows (including pipes, culverts, debris piles etc.) on or within 300 feet of the proposed construction area, the City's MMC and MSCP Sections shall be contacted. The City's MSCP and MMC Section shall contact the Wildlife Agencies regarding eviction/collapsing burrows and enlist appropriate City biologist for on-going coordination with the Wildlife Agencies and the qualified consulting BUOW biologist. No construction shall occur within 300 feet of an active burrow without written concurrence from the Wildlife Agencies. This distance may increase or decrease, depending on the burrow's location in relation to the site's topography, and other physical and biological characteristics.
 - a) **Outside the Breeding Season:** If the BUOW is using a burrow on site outside the breeding season (i.e., September 1 – January 31), the BUOW may be evicted after the qualified BUOW biologist has determined via fiber optic camera or other appropriate device, that no eggs, young, or adults are in the burrow. Eviction requires preparation of an Exclusion Plan prepared in accordance with CDFG Staff Report 2012, Appendix E (or most recent guidance available) for review and submittal to Wildlife Agencies. Written concurrence from the Wildlife Agencies is required prior to Exclusion Plan implementation.
 - b) **During Breeding Season:** If a BUOW is using a burrow on-site during the breeding season (February 1– August 31), construction shall not occur within 300 feet of the burrow until the young have fledged and are no longer dependent on the burrow, at which time the BUOWs can be evicted. Eviction requires preparation of an Exclusion Plan prepared in accordance with CDFG Staff Report 2012, Appendix E (or most recent guidance available) for review and submittal to Wildlife Agencies. Written concurrence from the Wildlife Agencies is required prior to Exclusion Plan implementation.

- 3) **Survey Reporting During Construction:** Details of construction surveys and evictions (if applicable) carried out shall be immediately (within 5 working days or sooner) reported to the City's MMC, and MSCP Sections and the Wildlife Agencies and must be provided in writing (as by e-mail) and acknowledged to have been received by the required Agencies and DSD Staff member(s).

Post Construction:

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

Mitigation Measure Bio-3 – LEAST BELL'S VIREO

Prior to the issuance of any grading permit, the DSD Environmental Designee shall verify that the following project requirements regarding the least Bell's vireo are shown on the construction plans:

No clearing, grubbing, grading, or other construction activities shall occur between March 15 and September 15, the breeding season of the least Bell's vireo, until the following requirements have been met to the satisfaction of the City Manager:

- A. A qualified biologist (possessing a valid endangered species act section 10(a)(1)(a) recovery permit) shall survey those wetland areas that would be subject to construction noise levels exceeding 60 A-weighted decibels [dB(A)] hourly average for the presence of the least Bell's vireo. Surveys for this species shall be conducted pursuant to the protocol survey guidelines established by the USFWS within the breeding season prior to the commencement of construction. If the least Bell's vireo is present, then the following conditions must be met:
 - I. Between March 15 and September 15, no clearing, grubbing, or grading of occupied least Bell's vireo habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; and
 - II. Between March 15 and September 15, no construction activities shall occur within any portion of the site where construction activities would result in noise levels exceeding 60 dB(A) hourly average at the edge of occupied least Bell's vireo or habitat. An analysis showing that noise generated by construction activities would not exceed 60 dB(A) hourly average at the edge of occupied habitat must be completed by a qualified acoustician (possessing current noise engineer license or registration with monitoring noise level experience with listed animal species) and approved by the city manager at least two weeks prior to the commencement of construction activities. Prior

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

- III. At least two weeks prior to the commencement of construction activities, under the direction of a qualified acoustician, noise attenuation measures (e.g., berms, walls) shall be implemented to ensure that noise levels resulting from construction activities will not exceed 60 dB(A) hourly average at the edge of habitat occupied by the least Bell's vireo. Concurrent with the commencement of construction activities and the construction of necessary noise attenuation facilities, noise monitoring* shall be conducted at the edge of the occupied habitat area to ensure that noise levels do not exceed 60 dB(A) hourly average. If the noise attenuation techniques implemented are determined to be inadequate by the qualified acoustician or biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season (September 16).

*Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

- B. If least Bell's vireo are not detected during the protocol survey, the qualified biologist shall submit substantial evidence to the city manager and applicable resource agencies which demonstrates whether or not mitigation measures such as noise walls are necessary between March 15 and September 15 as follows:
 - I. If this evidence indicates the potential is high for least Bell's vireo to be present based on historical records or site conditions, then condition A. III shall be adhered to as specified above.
 - II. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

HISTORICAL RESOURCES (ARCHAEOLOGY)

Mitigation Measure HR-1

I. Prior to Permit Issuance

- A. Entitlements Plan Check

1. Prior to issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits or a Notice to Proceed for Subdivisions, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Archaeological Monitoring and Native American monitoring have been noted on the applicable construction documents through the plan check process.
- B. Letters of Qualification have been submitted to ADD
1. The applicant shall submit a letter of verification to 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 Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour Hazardous Waste Operations and Emergency Response (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 Historical Resources Guidelines.
 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 (quarter 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 quarter mile radius.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Native American consultant/monitor (where Native American resources may be impacted), Construction Manager (CM) and/or Grading Contractor, Resident

Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American Monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.

- a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.

2. Identify Areas to be Monitored

- a. Prior to the start of any work that requires monitoring, the PI shall submit an Archaeological Monitoring Exhibit (AME) (with verification that the Archaeological Monitoring Exhibit 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 Archaeological Monitoring Exhibit 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 Occupational Safety and Health Administration 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 Archaeological Monitoring Exhibit and provide that information to the PI and MMC. If prehistoric resources are encountered during the Native American consultant/monitor's absence, work shall stop and the Discovery Notification Process detailed in Section III.B-C and IV.A-D shall commence.
3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as modern disturbance post-dating the previous grading/trenching activities, presence of fossil formations, or when native soils are encountered that may reduce or increase the potential for resources to be present.
4. The archaeological and Native American consultant/monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of ANY discoveries. The RE shall forward copies to MMC.

B. Discovery Notification Process

1. In the event of a discovery, the Archaeological Monitor shall direct the contractor to temporarily divert all soil disturbing activities, including but not limited to digging, trenching, excavating, or grading activities in the area of discovery and in the area reasonably suspected to overlay adjacent resources and immediately notify the RE or BI, as appropriate.
2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
3. The PI shall immediately notify MMC by phone of the discovery and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.
4. No soil shall be exported off-site until a determination can be made regarding the significance of the resource specifically if Native American resources are encountered.

C. Determination of Significance

1. The PI and Native American consultant/monitor, where Native American resources are discovered shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.
 - b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program 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 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 granted access to the site, 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, the landowner shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance, THEN
 - c. 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; or
- (3) Record a document with the County. The document shall be titled "Notice of Reinterment of Native American Remains" and shall include a legal description of the property, the name of the property owner, and the owner's acknowledged signature, in addition to any other information required by PRC 5097.98. The document shall be indexed as a notice under the name of the owner.

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 CSV and submit to MMC via fax by 8 AM 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 8 AM of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

B. If night and/or weekend work becomes necessary during the course of construction

1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
2. The RE, or BI, as appropriate, shall notify MMC immediately.

- C. All other procedures described above shall apply, as appropriate.

VI. Post Construction

A. Preparation and Submittal of Draft Monitoring Report

1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Historical Resources Guidelines (Appendix C/D) which describes the results, analysis, and conclusions of all phases of the Archaeological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring. It should be noted that if the PI is unable to submit the Draft Monitoring Report within the allotted 90-day timeframe resulting from delays with analysis, special study results or other complex issues, a schedule shall be submitted to MMC establishing agreed due dates and the provision for submittal of monthly status reports until this measure can be met.
 - a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with State of California Department of Parks and Recreation

The PI shall be responsible for recording (on the appropriate State of California Department of Park and Recreation forms-DPR 523 A/B) any significant or potentially significant resources encountered during the Archaeological Monitoring Program in accordance with the City's Historical Resources Guidelines, and submittal of such forms to the South Coastal Information Center with the Final Monitoring Report.

2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
4. MMC shall provide written verification to the PI of the approved report.
5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Artifacts

1. The PI shall be responsible for ensuring that all cultural remains collected are cleaned and catalogued

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

TRIBAL CULTURAL RESOURCES

Impacts to Tribal Cultural Resources would be reduced to below a level of significance with implementation of mitigation measures outlined under Historical Resources (Archaeology).

Passed by the Council of The City of San Diego on JUL 25 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 04 2023

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Cennie Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **315070**