RESOLUTION NUMBER R-_ 311370

DATE OF FINAL PASSAGE OCT 17 2017

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO CERTIFYING ENVIRONMENTAL IMPACT REPORT NO. 332401/SCH NO. 2014081053 AND ADOPTING FINDINGS AND THE MITIGATION MONITORING AND REPORTING PROGRAM FOR THE LEGACY INTERNATIONAL CENTER - PROJECT NO. 332401.

WHEREAS, on August 13, 2013, Morris Cerullo Legacy Center Foundation submitted an application to Development Services Department for a General Plan, Mission Valley Community Plan and Atlas Specific Plan Amendment, Vesting Tentative Map with easement vacations, Site Development Permit (SDP), Planned Development Permit (PDP), Conditional Use Permit (CUP) and Rezone for the Legacy International Center (Project); and

WHEREAS, the project site is located at 875 Hotel Circle South and legally described as: Lot 1 of Mission Valley Inn, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 3347, filed in the Office of the County Recorder of San Diego County, December 28, 1955, in the Mission Valley Community Plan area; and

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

WHEREAS, issue was heard by the City Council on October 17, 2017; and

WHEREAS, under San Diego Charter section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the City Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

WHEREAS, the City Council considered the issues discussed in Environmental Impact Report No. 332401/SCH No. 2014081053 (Report) prepared for this Project; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, 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, which are attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the Project as required by this City Council in order to mitigate or avoid significant effects on the environment, which is attached hereto as Exhibit 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 DEVELOPMENT SERVICES DEPARTMENT, 1222 FIRST AVENUE, 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 after final passage of the ordinance associated with the Project.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
Corrine L. Neuffer
Deputy City Attorney

CLN:dkr
August 15, 2017
October 24, 2017 Cor. Copy
Or.Dept:Planning
Doc. No.: 1561431_2

Attachments: Exhibit A, Findings
Exhibit B, Mitigation Monitoring and Reporting Program

EXHIBIT A

GENERAL PLAN/MISSION VALLEY COMMUNITY PLAN/ATLAS SPECIFIC PLAN AMENDMENT, VESTING TENTATIVE MAP (VTM), SITE DEVELOPMENT PERMIT (SDP), PLANNED DEVELOPMENT PERMIT (PDP), REZONE, and CONDITIONAL USE PERMIT (CUP)
PROJECT NO. 332401

Legacy International Center Project

CANDIDATE'S CEQA FINDINGS OF FACT

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I. INTRODUCTION

The California Environmental Quality Act (CEQA) (Pub. Res. Code §§ 21000, et seq.) and the CEQA Guidelines (14 Cal. Code Regs §§ 15000, et seq.) promulgated thereunder, require that the environmental impacts of a project be examined before a project is approved. In addition, once significant impacts have been identified, CEQA and the CEQA Guidelines require that certain findings be made before project approval. It is the exclusive discretion of the decision-maker certifying the Environmental Impact Report (EIR) to determine the adequacy of the proposed candidate findings. It is the role of staff to independently evaluate the proposed candidate findings and to make a recommendation to the decision-maker regarding their legal adequacy. Specifically, regarding findings, CEQA Guidelines section 15091 provides:

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the 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 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.

(b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other materials which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

The "changes or alterations" referred to in Section 15091(a)(1) above, that are required in, or incorporated into, the project which mitigate or avoid the significant environmental effects of the project, may include a wide variety of measures or actions as set forth in CEQA Guidelines Section 15370, including:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

The following Candidate Findings of Fact have been submitted by the Applicant as Candidate Findings of Fact (Findings) to be made by the decision-making body. The Development Services Department (DSD), Environmental Analysis Section (EAS) does not recommend that the decision-making body either adopt or reject these Findings. They are attached to allow readers of this report an opportunity to review the Applicant's position on this matter. It is the exclusive discretion of the decision-maker certifying the Final EIR to determine the adequacy of the proposed Findings.

Having received, reviewed, and considered the Final EIR for the Legacy International Center Project, State Clearinghouse No. 2014081053, as well as all other information in the Record of Proceedings (as defined below) on this matter, the following Findings are hereby adopted by the City of San Diego (City) in its capacity as the CEQA Lead Agency. These Findings 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.

A. Record of Proceedings

For purposes of CEQA and these Findings, the Record of Proceedings for the proposed 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 proposed project;
- Comments received on the NOP;
- Scoping Meeting and comments received at the Scoping Meeting;
- The Draft EIR for the proposed project;

- All written comments submitted by agencies or members of the public during the public review comment period on the Draft EIR;
- All responses to written comments submitted by agencies or members of the public during the public review comment period on the Draft EIR;
- All written and verbal public testimony presented during a noticed public hearing for the proposed project at which such testimony was taken;
- The Mitigation Monitoring and Reporting Program (MMRP);
- The reports and technical memoranda included or referenced in the responses to public comments;
- All documents, studies, EIRs, or other materials incorporated by reference or cited to in the Draft EIR and the Final EIR;
- All supplemental documents prepared for the Final EIR and submitted to the San Diego City Council (City Council) prior to the City Council hearing;
- 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;
- City staff report(s) prepared for the hearing related to the proposed project and any exhibits thereto;
- Project permit conditions; and
- Any other relevant materials required to be in the record of proceedings by CEQA section 21167.6(e).

The Draft EIR and related technical studies were made available for review during the public review period at http://www.sandiego.gov/city-clerk/officialdocs/notices/index.shtml as well as at the following public libraries:

Mission Hills Branch Library
925 Washington Street
San Diego, California 92103

Mission Valley Library
2123 Fenton Parkway
San Diego, California 92108

B. Custodian and Location of Records

The documents and other materials, which constitute the administrative record for the City's actions related to the project, as detailed in Section I.A. above, are located at City of San Diego Development Services Department, 1222 First Avenue, Fifth Floor, San Diego, California 92101. The City Development Services Department 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 and required times have been and will be available upon request at the offices of the City Development Services Department. This information is provided in compliance with Public Resources Code section 21081.6(a)(2) and CEQA Guidelines section 15091(e).

II. PROJECT SUMMARY

A. Project Location

The project site is located within the City of San Diego jurisdiction, south of Interstate 8 (I-8), east of Interstate 5 (I-5), and west of State Route 163 (SR-163). The project site consists of two parcels at 875 Hotel Circle South (Assessor's Parcel Numbers 444-060-10 and 444-060-11). At the time the NOP was completed, the site was developed as the Mission Valley Resort Hotel.

The 18.1-acre project site is within the Mission Valley Community Plan area in the central portion of the City. The Mission Valley Community Plan area encompasses 3,210 acres and is generally bounded by Friars Road and the northern slopes of the valley on the north, the eastern banks of the San Diego River on the east, the southern slopes of the valley on the south, and I-5 on the west.

B. Project Description

The project would redevelop the existing Mission Valley Resort Hotel property to construct the Legacy International Center, which would include a welcoming center, catacombs, history center, pavilion, timeshare village, executive offices, amphitheater, and the central plaza. To support these uses, religious and inspirational features, parking, landscaping, and infrastructure improvements are also proposed.

Demolition and Grading

The project would involve the demolition of the existing hotel, covering approximately 13 acres of the 18.1-acre site. Grading would include 51,420 cubic yards of cut and 53,398 cubic yards of fill, which would not result in an export of cut material. Maximum cut depths would be 27 feet and maximum fill depths would be 14 feet. Grading for the project is shown in Final EIR Figure 3-3.

Retaining walls are proposed in several locations as detailed in Final EIR Table 3-3.

Project's Component Parts

The mixed-use development would include various buildings ranging in height from subterranean to a maximum of 65 feet in height. The project would provide religious, lodging, administrative, recreational, and commercial uses. The project's component parts are detailed in Final EIR Section 3.4 (complete breakdown in Final EIR Table 3-1), shown in Final EIR Figure 3-1, and summarized in the following paragraphs:

- Legacy Vision Center (Building 1): The 41,071-square-foot Legacy Vision center would be a two-level building in the northeastern portion of the site. The building would contain a welcome center and grand lobby (8,459 square feet), a history dome theater/artifact

museum (6,206 square feet), an exhibit gallery (16,185 square feet), a retail shop (1,096 square feet), catacombs (3,390 square feet), circulation components (1,137 square feet), and back of house (BOH)/public facilities (4,598 square feet).

- Pavilion (Building 2): The proposed two-level 63,447-square-foot Pavilion building would be located in the western area of the site. The Pavilion would contain its own grand lobby (2,828 square feet) as well as a theater (12,106 square feet), a learning center (13,844 square feet), retail (1,052 square feet), a restaurant (4,719 square feet), and BOH/circulation (12,097 square feet). The upper floor would contain executive offices (16,801 square feet).

- Legacy Village Hotel (Building 3): The Legacy Village Hotel would include 127 hotel units within a five-story building. The village would be located in the southern area of the site at a higher elevation than the other buildings and would be furthest from Hotel Circle South. The building would include a 3,850-square-foot restaurant, as well as a 2,517-square-foot wellness center with a spa, and fitness and therapy areas. The hotel and associated laundry and housekeeping areas would total 81,753 square feet. The building would be 65 feet in height (111 feet above mean sea level). The hotel would include a gathering space for small events.

- Parking (Building 4 and Surface Lots): The project would exceed the minimum of 524 parking stalls (approximately 300 in the parking structure and 224 surface stalls. The project includes a total of 659 parking spaces consisting of surface parking and a parking structure. A total of 224 surface parking spaces (including 15 accessible and 4 van accessible spaces) would be provided throughout the site. The proposed 435-space parking structure would include up to three levels above ground and would be located in the southwestern portion of the site.

- Souk (Building 5): The 7,783-square-foot souk, an outdoor open-air market, would include a non-permanent kiosk for retail and informational uses.

- Outdoor Areas: As the project's purpose is to provide a destination for religious tourism, the project includes several community, religious and inspirational features. These features consist of a central plaza, a city plaza, a replica wailing wall, a water feature, a prayer garden, and a pedestrian trail. The city plaza and central plaza would be open areas that would allow for informal outdoor community space and encourage pedestrian circulation between project components. The western wailing wall and a water feature would be located adjacent to the souk. The 2,542-square-foot water feature would include light-emitting diode (LED) lighting effects, and could be used without water during state-mandated water conservation drought conditions. In addition, there would be a pedestrian trail culminating in a vista (a viewing area) along the south side of the site within the portion of the hillside that has been previously disturbed due to a sewer bench. These features are considered ancillary uses.

Infrastructure

The project would use existing infrastructure to the greatest extent feasible with additional infrastructure improvements to service the project. The project would construct access changes, frontage improvements to Hotel Circle South, sewer connections, water line upgrades and connections, and storm drain improvements.

Pedestrian Access and Circulation

The project's pedestrian circulation plan is shown in Final EIR Figure 3-4 and includes internal walkways, as well as connectivity from the non-contiguous sidewalk along Hotel Circle South to the trails to the south (see Final EIR Section 3.4.6.4 for details of the proposed pedestrian connections).

Roadway Improvements

Final EIR Figure 3-6 shows details of all proposed roadway improvements. The primary improvements include the following.

- Access to the project site would be from two driveway points on Hotel Circle South. Improvements to Hotel Circle South along the project frontage would entail widening the roadway from the existing two-lane roadway to its classification of a four-lane Collector.

- Dedicated turn lanes for eastbound traffic would be located at the freeway on-ramp and at the eastern project driveway, and westbound dedicated turn lanes would be provided into the project's western project driveway.

- Existing bike lanes would be retained, but would be widened from their existing 3-to-4-foot width up to a 6-foot width.

Other Project Design Features

The project includes several types of lighting, such as security lighting, landscape lighting, and structure lighting (see Final EIR Section 3.4.4).

Heavy landscaping is proposed along Hotel Circle South (linear greenbelt), throughout the parking lot, and around the village timeshare. Landscaping would also be focused along walkways to promote pedestrian use. Landscape screening of retaining walls and landscaping within the parking areas would also be provided. Details of the Landscape Plan are shown in Final EIR Figure 3-7a, and the plant palette is shown in Final EIR Figure 3-7b.

Because the project proposes structures to be included within 100-feet of natural vegetation, a Brush Management Plan is included as part of the project. The proposed Brush Management Plan is detailed in Final EIR Figure 3-8 and would comply with the City's brush management requirements.

C. Discretionary Actions

The following discretionary actions are being considered by the City Council:

- Community Plan Amendment
- Atlas Specific Plan Amendment (removal of the site from the Atlas Specific Plan)
- Rezone from MVPD-MV-M/SP to MVPD-MV-CV
- Site Development Permit (SDP)
- Planned Development Permit (PDP)
- Conditional Use Permit (CUP)
- Vesting Tentative Map (VTM)

D. Statement of Objectives

The primary objectives of the proposed project are:

1. To become an internationally celebrated destination for religious tourism.
2. To provide a mix of lodging, retail, entertainment, recreational, and administrative/office uses that will provide a wide range of activities and amenities for visitors and employees on-site, thereby reducing driveway trips and overall vehicle miles traveled relative to a single-use project.
3. To create a unique project that introduces iconic architecture to Mission Valley.
4. To preserve significant environmental resources and steep hillsides by conforming to the previous development footprint to the extent possible.
5. To invite pedestrian activity through the provision of walkways/trails, a linear greenbelt with a water feature, and courtyards/plazas.
6. To reduce automobile reliance by offering a shuttle service to transport visitors to and from major transportation hubs as well as other popular San Diego tourist destinations.
7. To support the City's sustainable and infill development goals by redeveloping and intensifying an existing underutilized and auto-dominated site.
8. Create both temporary construction jobs and a net increase in permanent jobs as compared to the existing use.

The City has considered the statement of objectives sought by the proposed project as found in Section 3.1 of the Final EIR. The City hereby adopts these objectives as part of the proposed project.

III. ENVIRONMENTAL REVIEW AND PUBLIC PARTICIPATION

In accordance with CEQA Guidelines Section 15082, the City distributed an NOP of a Draft EIR to the State Clearinghouse, local and regional responsible agencies, and other interested parties on August 18, 2014 for a 30-day public comment period. Various agencies and other interested parties responded to the NOP. In addition, a public scoping meeting was held on September 3, 2014. The City's NOP and comments are included in the Final EIR as Appendix A.

The Draft EIR for the proposed project was then prepared and circulated for review and comment by the public, agencies and organizations for a public review period that began on November 30, 2015 and concluded on January 15, 2016. A Notice of Completion of the Draft EIR was sent to the State Clearinghouse, Office of Planning and Research (SCH No. 2014081053). A Notice of Availability of the Draft EIR for review was mailed to organizations and parties expressing interest in the project. The Notice of Availability was also filed with the City Clerk and published in the *San Diego Daily Transcript.* The City received comments on the proposed project. Those responses to comments have been incorporated into the Final EIR.

On June 8, 2017, the City of San Diego Planning Commission (Planning Commission) held a public hearing on the proposed project. The Planning Commission recommended approval.

IV. GENERAL FINDINGS

The City hereby finds as follows:

- Pursuant to CEQA Guidelines sections 15050 and 15051, the City is the "Lead Agency" for the proposed project.
- The Draft EIR and Final EIR were prepared in compliance with CEQA, CEQA Guidelines, and any City Significance Determination Thresholds.
- The City has independently reviewed and analyzed the Draft EIR and Final EIR, and these documents reflect the independent judgment of the City.
- An MMRP has been prepared for the proposed project, which the City has adopted or made a condition of approval of the proposed project. That MMRP is incorporated herein by reference and is considered part of the Record of Proceedings for the proposed project.
- The MMRP designates responsibility and anticipated timing for the implementation of mitigation measures. The City will serve as the MMRP Coordinator.
- In determining whether the proposed project has a significant impact on the environment, and in adopting these Findings pursuant to Section 21081 of CEQA, the City has based

its decision on substantial evidence and has complied with CEQA Sections 21081.5 and 21082.2 and CEQA Guidelines Section 15901(b).

- The impacts of the proposed project have been analyzed to the extent feasible at the time of certification of the Final EIR.

- Pursuant to Senate Bill 18, the City provided consultation opportunity with Native American tribes, as relevant.

- The City reviewed the comments received on the Draft EIR and the responses thereto and has determined that neither the comments received nor the responses to such comments add significant new information regarding environmental impacts associated with the proposed project. The City has based its actions on full appraisal of all viewpoints, including all comments received up to the date of adoption of these Findings concerning the environmental impacts identified and analyzed in the Final EIR.

- The responses to comments on the Draft EIR, which are contained in the Final EIR, clarify and amplify the environmental analyses therein.

- The City has made no decisions that constitute an irretrievable commitment of resources toward the proposed project prior to certification of the Final EIR, nor has the City previously committed to a definite course of action with respect to the proposed project.

- Copies of all the documents incorporated by reference in the Draft EIR and/or Final EIR are and have been available upon request at all times at the offices of the City, custodian of record for such documents or other materials.

- Having received, reviewed, and considered all information and documents in the record, the City hereby conditions the proposed project and finds as stated in these Findings.

V. FINDINGS REQUIRED UNDER CEQA

CEQA Section 21002 provides that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen the significant environmental effects of such projects[...]." The same statute states that the procedures required by CEQA "are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures that will avoid or substantially lessen such significant effects. CEQA Section 21002 goes on to state that "in the event [that] specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects."

The mandate and principles in CEQA Section 21002 are implemented, in part, through the requirement that agencies must adopt findings before approving projects for which EIRs are required. For each significant environmental effect identified in an EIR for a proposed project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that "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" (CEQA Guidelines Section 15091(a)(1)). The second permissible finding is that "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" (CEQA Guidelines Section 15091 (a)(2)). The third potential conclusion is that "specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR" (CEQA Guidelines Section 15091(a)(3)).

CEQA Section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." CEQA Guidelines Section 15364 adds another factor: "legal" considerations (see also Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 565).The concept of "feasibility" also relates to whether a particular alternative or mitigation measure promotes the underlying goals and core objectives of a project (see San Diego Citizenry Group v. County of San Diego (2013) 219 Cal.App.4th 1, 18; see also City of Del Mar v. City of San Diego (1982) 133 Cal.App.3d 410, 417). "[F]easibility' under CEQA encompasses 'desirability' to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors" (Ibid).

VI. MITIGATION MONITORING AND REPORTING PROGRAM

As required by CEQA Section 21081.6 (a)(1), the City, in adopting these Findings, also concurrently adopts an MMRP. The program is designed to ensure that during project implementation, all responsible parties comply with the feasible mitigation measures identified below. The MMRP is described in Chapter 10.0 of the Public Review EIR, Mitigation Monitoring and Reporting Program. The City will use the MMRP to track compliance with project mitigation measures. The MMRP will be available for the public to review by request during the mitigation compliance period, which is on-going following project approval through buildout of the project.

The monitoring program will serve the dual purpose of verifying completion of the mitigation measures for the project and generating information on the effectiveness of the mitigation measures to guide future decisions.

VII. SUMMARY OF IMPACTS

The Final EIR contains an environmental analysis of the potential impacts associated with implementing the proposed project. The Final EIR concludes that implementation of the project would result in **significant impacts that would be mitigated to below a level of significance** with respect to the following issue areas: Land Use (MHPA Adjacency), Transportation/Circulation (Traffic Capacity – Intersections), Historical Resources (Archaeological), Biological Resources (Sensitive Species/Sensitive Habitat/MHPA Adjacency), Paleontological Resources, and Noise (Noise Generation – HVAC). All significant project impacts would be mitigated to below a level of significance.

VIII. SIGNIFICANT EFFECTS AND MITIGATION MEASURES

A. Impacts Mitigated to Less-Than-Significant Levels

1. Land Use

Thresholds of Significance Issue 4: MSCP and MHPA Consistency

Pursuant to Issue 4, a significant impact would occur if the proposed project resulted in a conflict with adopted environmental plans, including the City's Multiple Species Conservation Program (MSCP) Subarea Plan and the Multi-Habitat Planning Area (MHPA) adopted for the purpose of avoiding or mitigating an environmental effect for the area.

Impacts

As shown in Final EIR Figure 4.1-1, the property is adjacent to MHPA on the southeastern corner, and a small portion of the project site along the southern perimeter is within the MHPA. Due to the site's location in relation to the MHPA, construction activity from the development of the project has a potential to significantly impact adjacent habitat.

Explanation

The MHPA has been designed to maximize conservation of sensitive biological resources, including sensitive species. When land is developed adjacent to the MHPA, there is a potential for indirect impacts, or edge effects, that may degrade the habitat value or disrupt animals within the preserve area.

Significant impacts due to project adjacency to the MHPA could be long term in nature. The project would be required to adhere to the City's MHPA Land Use Adjacency Guidelines that contain policies related to controlling edge effects on the MHPA. As detailed in Final EIR Section 4.1.5.1, the project has been designed to MHPA adjacency standards related to drainage, toxics, lighting, noise, brush management, invasives, grading, and barriers/access. Failure to implement the identified design features could result in significant long-term impacts to the City's MHPA (Impact LU-1).

Short-term construction impacts could result in significant impacts to adjacent MHPA land due to the disruption of nesting and breeding, affecting the population of sensitive species. As discussed in detail in Final EIR Section 4.4, the project has the potential to result in direct and indirect impacts to nesting raptors protected by the California Fish and Game Code 3503.5 and nesting bird species protected by the Migratory Bird Treaty Act (MBTA) during construction activities. Construction-related activities could result in significant short-term impacts to sensitive species nesting and/or breeding within the MHPA land (Impact BR-1).

Mitigation

LU-1: To mitigate long-term impacts to the City's MHPA, Mitigation Measure LU-1 requires prior to issuance of any grading permits, the DSD Environmental Designee (ED) to verify that the project design has been accurately represented in the construction documents (CDs) and is in

conformance with the associated discretionary permit conditions and Exhibit "A," and the City's MSCP Land Use Adjacency Guidelines for the MHPA. The CDs are required to show MHPA boundaries on-site and on adjacent properties. The CDs shall also show drainage details, areas for equipment storage and trash, location of fencing, lighting plans, barriers along MHPA boundaries, landscaping plans, brush management, and construction noise-reduction measures. Additionally, this mitigation measure requires verification that clearing, grubbing, grading or other construction restrictions relating to the California gnatcatcher are shown on the CDs.

BR-1 and BR-2: To mitigate short-term impacts to sensitive species nesting and/or breeding within the MHPA land, the Applicant would implement Mitigation Measures BR-1 and BR-2, summarized in Section A.4 Biological Resources.

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level of insignificance. Specifically, Mitigation Measures LU-1, BR-1 and BR-2 are feasible and shall be required as a condition of approval and made binding on the Applicant.

Implementation of these mitigation measures would reduce significant direct impacts related to MHPA adjacency because they assure that MHPA land and sensitive nesting birds located adjacent to the project site are detected, identified, and protected during construction activities. For these reasons, implementation of these mitigation measures would reduce significant impacts related to MHPA adjacency to a less-than-significant level.

Reference

Final EIR Chapter 4.1, Land Use; Chapter 4.4, Biological Resources

2. Transportation/Circulation

Threshold of Significance Issue 1: Traffic Capacity

Pursuant to Issue 1, a significant impact would occur if the project resulted in an increase in projected traffic that is substantial in relation to the capacity of the street system.

Direct Impacts

The project would result in the following direct/near-term impact to the following intersection:

Direct/Near-Term Impacts – Intersections

- Impact TR-1: Hotel Circle South / I-8 eastbound ramps (PM peak hour)

Explanation

Direct impacts are based on the analysis of adding project traffic to the existing traffic conditions. Near-term impacts are analyzed to determine impacts that would occur when the project becomes operational. Therefore, the near-term analysis takes into account traffic from any projects anticipated to be in effect in the same timeframe as the project.

Direct/Near-Term Impacts to Intersections

No additional intersections would operate unacceptably with the addition of the proposed project to the near term without project; however, conditions at the Hotel Circle South / I-8 eastbound ramps would degrade further with the addition of project traffic in the PM peak hour. Specifically, the proposed project would add more than 1 second of delay to the intersection of Hotel Circle/ I-8 eastbound ramps, which currently operates at Level of Service (LOS) F. This degradation of service represents a significant direct impact (Impact TR-1).

Mitigation

TR-1: To mitigate direct impacts to intersection Impact TR-1, the Mitigation Measure TR-1 requires, prior to issuance of building permits, full width dedication (varying width up to 28 feet) along the project frontage and shall assure by permit and bond the construction of an additional eastbound and westbound travel lane along Hotel Circle South.

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level of insignificance. Specifically, Mitigation Measure TR-1 is feasible and shall be required as a condition of approval and made binding on the Applicant.

Implementation of Mitigation Measure TR-1 would reduce significant direct traffic impacts identified as Impact TR-1, because the widening of this segment is feasible due to the fact that the project can provide the needed right-of-way dedication along its own frontage. The road improvement would improve the flow of traffic at this location to a less-than-significant level.

Cumulative Impacts – Intersections

The addition of the project to the year 2035 conditions would not cause any additional intersections to operate unacceptably since the increase in delay is within the allowable threshold (e.g., 1 second for intersections operating at LOS F and 2 seconds for intersections operating at LOS E). The project would, however, result in a significant impact to the intersection of Hotel Circle North / I-8 westbound ramps, because year 2035 traffic would cause an increase delay by more than 1 second (see Final EIR Table 4.2-11). This degradation of service represents a significant cumulative impact to this segment (Impact TR-2).

Mitigation

TR-2: The Owner/Permittee will assure and construct a traffic signal and implement the restriping of the Hotel Circle North/Interstate 8 Westbound ramps intersection in the horizon year 2035, subject to the approval of the City Engineer and Caltrans. Should it be demonstrated to the satisfaction of the City Engineer that the improvement is not needed to mitigate horizon year impacts at this location, or if the improvement is completed by others, the Owner/Permittee will have no obligation to implement the signalization and restriping of the Hotel Circle North/Interstate 8 Westbound ramps in the horizon year 2035.

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect, as identified in the Final EIR, to a level of insignificance. Specifically, Mitigation Measure TR-2 is feasible and shall be required as a condition of approval and made binding on the Applicant.

Implementation of Mitigation Measure TR-2 would reduce the significant cumulative traffic impact identified as Impacts TR-2 because the signalization and reconfiguration would reduce the year 2035 delay to below the horizon year baseline conditions. The impact would be at a less-than-significant level.

Reference

Final EIR Chapter 4.2, Transportation/Circulation

3. Historical Resources

Threshold of Significance Issue 1: Prehistoric or Historic Impacts

Pursuant to Issue 1, a significant impact would occur if the proposed project resulted in the alteration and/or the destruction of a prehistoric or historic building (including an architecturally significant building), structure, or object or site.

Impact

The project site is located within an area of the County of San Diego that is rich in prehistoric cultural resources. As detailed in Final EIR Section 4.3.1.2, Mission Valley was used extensively during the prehistoric period due to the presence of water, habitable climate, and the availability of plant and animal resources. Numerous prehistoric sites have been recorded in the vicinity of the project site. With respect to historical resources, a Letter of Expert Opinion was submitted stating that the existing buildings on-site would not qualify as historical resources under any applicable local or state criteria. However, there is the possibility for subsurface prehistoric resources to be lost, which could result in a significant impact.

Explanation

Due to previously recorded cultural resources in the project vicinity, there is the possibility of significant buried prehistoric resources being present on-site, especially within the flat northern portion, where alluvial deposits are present. Project construction could uncover and destroy these unknown resources resulting in a potentially significant impact (Impact HR-1).

Mitigation

HR-1: To mitigate potential impacts to unknown prehistoric resources Mitigation Measure HR-1 requires that a qualified Principal Investigator (PI) attend the preconstruction meeting and to submit an Archaeological Monitoring Exhibit (AME) identifying the areas to be monitored prior to proposed project soil-disturbing activities. Per this measure, the Archaeological Monitor shall be present full time during all soil-disturbing and grading/excavation/trenching activities that could result in impacts to archaeological resources as identified on the AME. A Native American Monitor shall also attend the preconstruction meeting and also be present during work determined to potentially affect Native American Resources. The Archaeological Monitor shall document field activity via the Consultant Site Visit Record (CSVR) per HR-1, be allowed to temporary suspend all soil-disturbing activities in the area of discovery, and adhere to requirements to notice the MMC of discoveries. As needed, the PI and Native American shall evaluate the significance of the resource and determine if additional mitigation is needed per the guidance in this mitigation measure. Any artifacts collected must be property handled, analyzed, and curated/repatriated at the cost of the applicant in accordance with this measure. Upon completion of construction, the PI is required to submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the City's Historical Resources Guidelines and subject to the MMC approval.

If human remains are discovered, implementation of Mitigation Measure HR-1 requires that work stop in that area and the procedures as set forth in the California Public Resources Code (Section 5097.98) and State Health and Safety Code (Section 7050.5) are followed. These are also detailed in the EIR.

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect, as identified in the Final EIR, to a level of insignificance. Specifically, Mitigation Measure HR-1 is feasible and shall be required as a condition of approval and made binding on the Applicant.

Mitigation Measure HR-1 would assure the recording and recovery of important prehistoric/archaeological information that may otherwise be lost during construction of the project. The requirement for an Archaeological Monitor along with a Native American Monitor present for all grading activities, along with specified processes, assures that grading will be halted or diverted should any discovery be made. In the event that human remains are unearthed during grading activities, the Medical Examiner and/or the Native American Heritage Commission would be contacted as required to ensure that the proper steps are taken. This measure would reduce potentially significant impacts to prehistoric/historical resources to a less

than significant level. Implementation of these mitigation measures would be assured through their incorporation into the proposed project's MMRP.

Reference

Final EIR Chapter 4.3, Historical Resources

4. Biological Resources

Thresholds of Significance Issue 1: Sensitive Species

Pursuant to Issue 1, a significant impact would occur if the proposed project resulted in substantial loss of any species identified as candidate, sensitive, or special status species in the MSCP or other local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife (CDFW) or U.S. Fish and Wildlife Service (USFWS).

Impacts

While no sensitive plants were found to be supported on-site, one sensitive wildlife species, Cooper's hawk, was detected within the eucalyptus woodland during the general biological resources survey. This species of raptor is protected by California Fish and Game Code 3503.5 and is a nesting bird species protected by MBTA. Therefore, disturbances to the nesting sites could result in a significant impact.

Explanation

Construction activities could result in impacts to nesting raptors both on-site and within the adjacent MHPA land. As discussed above, the MHPA has been designed to maximize conservation of sensitive biological resources, including sensitive species. When land is developed adjacent to the MHPA, there is a potential for indirect impacts, or edge effects, that may degrade the habitat value or disrupt animals on-site (Impact BR-1) and/or within the preserve area (Impact LU-1).

Mitigation

See Mitigation Measure LU-1, above.

BR-1: To mitigate potential impacts to nesting raptors Mitigation Measure BR-1 requires that, prior to issuance of any construction permits, a verification shall be made that construction activities will occur outside the breeding season of February 1 through September 15 as a means to avoid impacts during the known breeding season. If habitat removal is to occur during this time period, a Qualified Biologist (QB) is required to conduct a pre-construction survey within 10 days of the start of construction activities to determine the presence or absence of nesting birds on the proposed area of disturbance. Additional protocol includes the submittal of pre-con survey results to the DSD. If nesting birds are discovered, the QB is required to submit a detailed mitigation plan to ensure that adequate steps are taken to avoid interruption or disturbance of breeding activities.

BR-2: To mitigate potential impacts to nesting raptors Mitigation Measure BR-2 requires that prior to construction, a QB is retained to implement the project's biological monitoring including the following: attending all pre-con meetings; submitting all required documentation to MMC; submitting a Biological Construction Mitigation/Monitoring Exhibit (BCME) including relevant restoration and vegetation plans, survey requirements and schedules, construction of avoidance barriers, and a site plan with written and graphic depiction of the project's biological mitigation/monitoring program, and a schedule. Mitigation Measure BR-2 also requires avoidance of the breeding season, or additional steps as set forth in Mitigation Measure BR-1.

Prior to construction activities, the QB is required to supervise the placement of orange construction fencing, or equivalent, along all limits of disturbance and verify compliance with the BCME. The QB is also required to meet with all parties including the construction crew to educate them regarding the need to avoid impacts outside the approved construction area and to protect sensitive resources.

During construction, the QB is required to monitor all construction activities to ensure that there is no encroachment into biologically sensitive areas. On-going records of site visits are required to be submitted to the MMC. If unknown active nests are discovered, the QC is required to halt construction activities until species-specific local, state, or federal regulations have been determined and applied. If nesting birds are detected, an avoidance buffer of 300 feet for active Cooper's hawk nests would be implemented until the young have fledged.

In the event that impacts exceed previously allowed amounts, additional impacts shall be mitigated in accordance with all applicable local, state, and federal law. The QB shall submit a final BCME/report to the satisfaction of the City ADD/MMC within 30 days of construction completion.

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level of insignificance. Specifically, Mitigation Measures LU-1, BR-1, and BR-2 are feasible and shall be required as a condition of approval and made binding on the Applicant.

Implementation of these mitigation measures would reduce potentially significant direct and indirect impacts related to nesting birds located on-site and within the adjacent MHPA because the measures assure that nesting raptors are detected, identified, and protected during all construction activities. For these reasons, implementation of these mitigation measures would reduce potentially significant impacts related to sensitive species to a less-than-significant level.

Thresholds of Significance Issue 2: Sensitive Habitat

Pursuant to Issue 2, a significant impact would occur if the proposed project resulted in substantial loss to any Tier I habitats, Tier II habitats, Tier IIIA habitats, or Tier IIIB habitats as identified in the Biology Guidelines of the Land Development Manual or other sensitive natural community as identified in local or regional plans, policies, regulations or by the CDFW or USFWS.

Impacts

As shown in Final EIR Table 4.4.3 and Figure 4.4-2, development of the project would impact vegetation communities considered sensitive under the regional MSCP. This would represent a significant impact to sensitive habitat.

Explanation

The project would impact three sensitive habitats: 0.02 acre of southern mixed chaparral, 0.05 acre of disturbed southern mixed chaparral, and 0.17 acre non-native grassland. These habitats are all MSCP Tier III habitat requiring mitigation (Impact BR-3).

Mitigation

BR-3: To mitigate impacts to sensitive habitat, Mitigation Measure BR-3 requires that prior to issuance of any construction permits, the Applicant provide mitigation in the form of 0.035 acre of Tier III-A or better habitat and 0.085 acre of Tier III-B or better habitat within the MHPA (see Final EIR Table 4.4-4). This mitigation shall be satisfied through the purchase of 0.12 mitigation credits through the City's Habitat Acquisition Fund (HAF) program.

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level of insignificance. Specifically, Mitigation Measure BR-3 is feasible and shall be required as a condition of approval and made binding on the Applicant.

Implementation of Mitigation Measure BR-3 would reduce significant impacts related to loss of sensitive habitat by assuring that equal or higher value habitat is preserved in perpetuity at appropriate mitigation ratios. Therefore, implementation of this mitigation measure would reduce significant impacts related to sensitive habitat to a less-than-significant level.

Thresholds of Significance Issue 5: MSCP

Pursuant to Issue 5, a significant impact would occur if the proposed project conflicted with the provisions of an adopted HCP, Natural Community Conservation Plan (NCCP), or other approved local, regional, or state habitat conservation plan, either within the MSCP or in the surrounding area.

Impacts

A total of 0.06 acre of MHPA occurs along the southern boundary of the project site. As discussed above, due to the site's location in relation to the MHPA, construction activity from the development of the project has a potential to significantly impact MHPA land.

Explanation

Grading activities on the southern limits of the development footprint would be within 300 feet of the adjacent MHPA and would have the potential to result in significant indirect impacts to the adjacent MHPA (Impact LU-1).

Mitigation

See Mitigation Measure LU-1, in the discussion of Land Use above (Section VIII.A.1).

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level of insignificance. Specifically, Mitigation Measure LU-1 is feasible and shall be required as a condition of approval and made binding on the Applicant.

Implementation of this mitigation measure would reduce significant impacts related to MHPA adjacency because it assures that MHPA land located adjacent to the project is protected during construction activities. Therefore, implementation of Mitigation Measure LU-1 would reduce significant impacts related to MHPA adjacency to a less-than-significant level.

Reference

Final EIR Chapter 4.4, Biological Resources; Chapter 4.1, Land Use

5. Paleontological Resources

Thresholds of Significance Issue 1: Paleontological Resources

Pursuant to Issue 1, a significant impact would occur if the proposed project required over 1,000 cubic yards of excavation at a depth of 10 feet or greater in a high resource potential formation or over 2,000 cubic yards of excavation at a depth of 10 feet or greater in a moderate resource potential formation.

Impact

The project site is underlain by Stadium Conglomerate Formation, which has high paleontological resource sensitivity (i.e., for fossil deposits). Impacts to unknown fossils would be considered significant.

Explanation

Proposed construction activities would disturb 12.6 acres of the 18.13-acre site. Grading would include 51,420 cubic yards of cut and 53,398 cubic yards of fill and would require cut depths of 10 feet or more in some areas of the project site. This would exceed the threshold for both high and moderate sensitivity areas. Therefore, impacts resulting from construction of the project would be significant (Impact PAL-1).

Mitigation

PAL-1: To mitigate potential impacts to paleontological resources, Mitigation Measure PAL-1 requires requirements for paleontological monitoring to be noted on the appropriate CDs, letters of qualifications submitted to the MMC, a preconstruction evaluation with a Paleontological Monitoring Exhibit (PME), and the PI attend the preconstruction meeting. The monitor is required to be present full time during grading/excavation/trenching activities as identified on the PME. In the event of a discovery, trenching activities in the area of discovery are required to stop and the monitor to immediately notify all appropriate parties as detailed in the Final EIR, including the MMC. The resource is required to be studied so a determination of significance can be made. If the resource is significant, the PI is required to submit a Paleontological Recovery Program and obtain written approval from the MMC. The PI shall submit a letter to the MMC indicating that the resource will be collected, curated, and documented in the Final Monitoring Report, before ground-disturbing activities in the area of discovery will be allowed to resume. Upon completion of construction, a Draft Monitoring Report (even if negative) is required to be prepared in accordance with the Paleontological Guidelines.

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level of insignificance. Specifically, Mitigation Measure PAL-1 is feasible and shall be required as a condition of approval and made binding on the Applicant.

Implementation of this mitigation measure would reduce significant impacts related to paleontological resources and would assure the recording and recovery of important paleontological information, which may otherwise be lost during construction of the proposed project. The requirement for a monitor to be present for all construction activities, along with the specified processes, assures that grading will be halted or diverted should any discovery be made. Implementation of Mitigation Measure PAL-1 assures that significance testing occurs right away and that important discoveries are reported and/or collected. Therefore, implementation of this mitigation measure would reduce significant impacts related to paleontological resources to a less-than-significant level.

Reference

Final EIR Chapter 4.6, Paleontological Resources

6. Noise

Thresholds of Significance Issue 2: Noise Generation

Pursuant to Issue 1, a significant impact would occur if the proposed project resulted in the exposure of people to noise levels that exceed the City's Noise Abatement and Control Ordinance.

Impact

The project site is located surrounded by residential development to the south and commercial development to the north, west, and partially to the east. Undeveloped land borders the site on the southeast and southwest corners. The primary noise sources on-site would be mechanical equipment associated with buildings and sound amplification equipment required for the amphitheater. Noise generated on-site that would be audible at surrounding properties above noise ordinance levels would be considered a significant impact.

Explanation

The project includes Heating, Ventilation, and Air Conditioning (HVAC) units to regulate interior temperatures of the proposed structures. As shown in Final EIR Table 4.8-4, maximum hourly noise levels at the property line due to the HVAC units may be less than the property line noise limits. However, as the specific type of unit and placement has not been determined at this time, the project has a potentially significant noise impact (Impact N-1).

Mitigation

N-1: To mitigate potential impacts to paleontological resources, Mitigation Measure N-1 requires that, prior to the issuance of a building permit, an acoustical study(s) of proposed mechanical equipment will be completed. The study is required to identify all noise-generating equipment, predict noise levels at property lines from all identified equipment, and recommend measures to be implemented (e.g., enclosures, barriers, site orientation), as necessary, to comply with the City Noise Ordinance Section 59.5.0401.

Finding

Pursuant to CEQA Guidelines Section 15091(a)(1), changes or alterations are required in, or incorporated into, the project that will substantially lessen or avoid the significant effect as identified in the Final EIR to a level of insignificance. Specifically, Mitigation Measure N-1 is feasible and shall be required as a condition of approval and made binding on the Applicant.

Implementation of Mitigation Measure N-1 would reduce significant impacts related to noise generation, because it would assure that an acoustical study be prepared and additional steps taken to reduce noise generated by project construction to allowable levels. Therefore, implementation of this mitigation measure would reduce significant impacts related to noise generation to a less-than-significant level.

Reference

Final EIR Chapter 4.8, Noise

B. Significant and Unavoidable Impacts

The project would have no significant, unmitigated impacts. As such, a statement of overriding considerations is not required pursuant to CEQA Guidelines Section 15093, and findings pursuant CEQA Guidelines Sections 15091(a)(2) and 15091(a)(3) are not necessary.

IX. CONCLUSIONS

To ensure consistency with CEQA Guidelines Section 15091, Findings, the following conclusions are provided for each portion of this guideline.

Pursuant to CEQA Guidelines Section 15091(a)(1), the City finds that the project would include changes or alterations to avoid or substantially lessen the following significant environmental effects identified in the Final EIR: Land Use (MHPA Adjacency), Transportation/Circulation (Traffic Capacity – Intersections), Historical Resources (Archaeological), Biological Resources (Sensitive Species/Sensitive Habitat/MHPA Adjacency), Paleontological Resources, and Noise (Noise Generation – HVAC). With the incorporation of the mitigation identified in the Final EIR and associated MMRP, all project impacts would be reduced to below a level of significance.

The City is not making findings pursuant to CEQA Guidelines Section 15091(a)(2), as the project does not require changes or alterations that are within the responsibility and jurisdiction of another public agency. The City is not making findings pursuant to CEQA Guidelines Section 15091(a)(3), as the project does not result in a significant impact that is infeasible to avoid through mitigation or project alternatives.

Pursuant to CEQA Section 15091(b), the City finds that there is substantial evidence in the administrative record to support the finding that changes or alterations have been required or incorporated into the project to avoid or substantially lessen the environmental impacts of the project. The City has independently reviewed and analyzed the Final EIR as required by CEQA. Prior to that review and analysis, the City circulated the Draft EIR and appendices and those documents also reflect the City's independent review, analysis, and judgment pursuant to CEQA.As the City is not making findings pursuant to CEQA Guidelines Section 15091(a)(2) or 15091(a)(3), CEQA Guidelines Section 15091(c) is not applicable.

Pursuant to CEQA Section 15091(d), the City shall adopt a MMRP that avoids or substantially lessens the environmental impacts of the project. As part of the certification of the Final EIR, the City finds that the Final EIR reflects the independent judgment of the City, acting in its capacity as the lead agency. As required by CEQA (Public Resources Code Section 21081.6), the City in adopting these findings also adopts the MMRP. The City hereby finds that the MMRP meets the requirements of Public Resources Code Section 21081.6 by providing for the implementation and monitoring of the project mitigation measures set forth herein, which mitigate the identified significant impacts associated with the project and are fully enforceable through permit conditions, agreements, these findings, and other measures.

Pursuant to CEQA Section 15091(e), findings section I(B) above provide the location and custodian information of the documents and other materials that constitute the records of proceedings upon which the City's decision is based. CEQA Guidelines Section 15091(f) is not applicable, as no statement of overriding considerations has been made for this project, and the City has not substituted such a statement for these findings.

EXHIBIT B

MITIGATION MONITORING AND REPORTING PROGRAM

GENERAL PLAN/MISSION VALLEY COMMUNITY PLAN/ATLAS SPECIFIC PLAN AMENDMENT, VESTING TENTATIVE MAP (VTM), SITE DEVELOPMENT PERMIT (SDP), PLANNED DEVELOPMENT PERMIT (PDP), REZONE, and CONDITIONAL USE PERMIT (CUP)
PROJECT NO. 332401

Legacy International Center Project

General Requirements

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 for a subdivision, or any construction permits, such as Demolition, Grading or Building, or beginning any construction related activity on-site, the DSD Director's Environmental Designee shall review and approve all CDs (plans, specification, details, etc.) to ensure the MMRP requirements are incorporated into the design.

2. In addition, the Environmental Designee 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: Biological Monitor, Archaeological Monitor, and Paleontological 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) #332401, 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.

4. MONITORING EXHIBITS: All consultants are required to submit, to RE and MMC, a monitoring exhibit on a 11x17-inch reduction of the appropriate construction plan, such as site plan, grading, landscape, etc., marked to clearly show the specific areas including the LIMIT OF WORK, scope of that discipline's work, and notes indicating when in the construction schedule that work will be performed. When necessary for clarification, a detailed methodology of how the work will be performed shall be included.

Note: Surety and Cost Recovery – When deemed necessary by the Development Services Director or City Manager, additional surety instruments or bonds from the private Permit Holder may be required to ensure the long-term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

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

DOCUMENT SUBMITTAL/INSPECTION CHECKLIST		
Issue Area	Document Submittal	Associated Inspection/Approvals/Notes
General	Consultant Qualification Letters	Prior to Preconstruction Meeting
General	Consultant Construction Monitoring Exhibits	Prior to or at Preconstruction Meeting
Land Use	Land Use Adjacency Issues CVSRs	Land Use Adjacency Issue Site Observations
Traffic	Verification of Traffic Mitigation	Prior to Issuance of Grading Permits for Each Phase
Biology	Biologist Limit of Work Verification	Limit of Work Inspection
Biology	Biology Monitoring Reports	Biology/Habitat Inspection
Archaeology	Archaeology Reports	Archaeology/Historic Site Observation
Paleontology	Paleontology Reports	Paleontology Site Observation
Bond Release	Request for Bond Release Letter	Final MMRP Inspections Prior to Bond Release Letter

SPECFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS

LAND USE (MHPA ADJACENCY)

LU-1: Prior to issuance of any construction permit or notice to proceed, Development Services Department and/or Multiple Species Conservation Program (MSCP) staff shall verify that the applicant has accurately represented the project's design in or on the Construction Documents (CDs), consisting of Construction Plan Sets for Private Projects and Contract Specifications for Public Projects, in conformance with the associated discretionary permit conditions and Exhibit "A" and the City's MSCP MHPA Land Use Adjacency Guidelines. The applicant shall provide an implementing plan and include references on/in CDs of the following:

A. Grading/Land Development/MHPA Boundaries. MHPA boundaries on-site and adjacent properties shall be delineated on the CDs. 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. For projects within or adjacent to the MHPA, all manufactured slopes associated with site development shall be included within the development footprint.

B. Drainage. All new and proposed parking lots and developed areas in and adjacent to the MHPA shall be designed so they do not drain directly into the MHPA. All developed and paved areas must prevent the release of toxins, chemicals, petroleum products, and exotic plant materials prior to release by incorporating the use of filtration devices, planted swales and/or planted detention/desiltation basins, or other approved permanent methods that are designed to

minimize negative impacts, such as excessive water and toxins into the ecosystems of the MHPA.

C. Toxics/Project Staging Areas/Equipment Storage. Projects that use chemicals or generate byproducts such as pesticides, herbicides, and animal waste, and other substances that are potentially toxic or impactive to native habitats/flora/fauna (including water) shall incorporate measures to reduce impacts caused by the application and/or drainage of such materials into the MHPA. No trash, oil, parking, or other construction/development-related material/activities shall be allowed outside any approved construction limits. Where applicable, this requirement shall be incorporated into leases on publicly owned property when applications for renewal occur. 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."

D. Lighting. Lighting within or adjacent to the MHPA shall be directed away/shielded from the MHPA and be subject to City Outdoor Lighting Regulations per Land Development Code (LDC) Section 142.0740. Specifically, under Section 142.0740 (a)(1) it states "Outdoor lighting fixtures shall be installed in a manner that minimizes negative impacts from light pollution including light trespass, glare, and urban sky glow in order to preserve enjoyment of the night sky and minimize conflict caused by unnecessary illumination". Additionally, under Section 142.0740 (c)(2) more specific information is provided on how to use required shields and flat lenses to control and direct light away from the conservation easement.

E. Barriers. New development within or adjacent to the MHPA shall be required to provide barriers (e.g., non-invasive vegetation; rocks/boulders; 6-foot-high, vinyl-coated, chain-link or equivalent fences/walls; and/or signage) along the MHPA boundaries to direct public access to appropriate locations, reduce domestic animal predation, protect wildlife in the preserve, and provide adequate noise reduction where needed.

F. Invasives. No invasive non-native plant species shall be introduced into areas within or adjacent to the MHPA.

G. Brush Management. New development adjacent to the MHPA shall be set back from the MHPA to provide required BMZ 1 area on the building pad outside of the MHPA. BMZ 2 may be located within the MHPA provided the BMZ 2 management will be the responsibility of a homeowners' association or other private entity except where narrow wildlife corridors require it to be located outside of the MHPA. Brush management zones shall not be greater in size than currently required by the City's regulations, the amount of woody vegetation clearing shall not exceed 50 percent of the vegetation existing when the initial clearing is done, and vegetation clearing shall be prohibited within native coastal sage scrub and chaparral habitats from March 1 to August 15 except where the City Assistant Deputy Director / Mitigation Monitoring Coordinator has documented the thinning would be consistent with City's MSCP Subarea Plan. Existing and approved projects are subject to current requirements of Municipal Code Section 142.0412.

H. Noise. To avoid indirect impacts to nesting coastal California gnatcatchers, no grading should occur within or adjacent to occupied habitat in the MHPA during their breeding season of

March 1 through August 15. If this is not feasible, protocol surveys for active nests should be conducted within the Diegan coastal sage scrub within the MHPA by a qualified biologist. Three surveys shall be conducted no less than one week apart. Surveys for coastal California gnatcatchers should be conducted pursuant to the recommended protocol survey guidelines as established by the U.S. Fish and Wildlife Service (USFWS; 1997).

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 between March 1 and August 15, the breeding season of coastal California gnatcatcher, until the following requirements have been met to the satisfaction of the City Manager:

1. A qualified biologist (possessing a valid Endangered Species Act Section 10(a)(1)(A) Recovery Permit) shall survey those habitat areas within the MHPA that would be subject to construction noise levels exceeding 60 decibels [dB(A)] hourly average for the presence of the coastal California gnatcatcher. Surveys for coastal California gnatcatcher shall be conducted pursuant to the protocol survey guidelines established by the USFWS within the breeding season prior to the commencement of any construction. If coastal California gnatcatchers are present, then the following conditions must be met:

a. Between March 1 and August 15, no clearing, grubbing, or grading of occupied coastal California gnatcatcher habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; and 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(A) hourly average at the edge of occupied coastal California gnatcatcher habitat. An analysis showing that noise generate 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 construction activities during the breeding season, areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; or

b. 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 coastal California gnatcatcher. 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 inadequate by the qualified acoustician or biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season (August 16).

*Construction noise 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.

2. If coastal California gnatcatchers 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 1 and August 15 as follows:

a. If this evidence indicates the potential is high for coastal California gnatcatcher to be present based on historical records or site conditions, then condition 1.c shall be adhered to as specified above.

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

TRANSPORTATION/CIRCULATION (TRAFFIC CAPACITY- INTERSECTIONS)

TR-1: Prior to the issuance of the first building permit for the Legacy International Center, the Owner/Permittee shall provide full width dedication (varying width up to 28 feet) along the project frontage and shall assure by permit and bond the construction of an additional eastbound and westbound travel lane along Hotel Circle South. Existing conditions shall be matched at the western and eastern limits of the site with appropriate transitions, satisfactory to the City Engineer. The improvements shall be completed and accepted by the City Engineer prior to issuance of the first Certificate of Occupancy.

TR-2: The Owner/Permittee will assure and construct a traffic signal and implement the restriping of the Hotel Circle North/Interstate 8 Westbound ramps intersection in the horizon year 2035, subject to the approval of the City Engineer and Caltrans. Should it be demonstrated to the satisfaction of the City Engineer that the improvement is not needed to mitigate horizon year impacts at this location, or if the improvement is completed by others, the Owner/Permittee will have no obligation to implement the signalization and restriping of the Hotel Circle North/Interstate 8 Westbound ramps in the horizon year 2035.

HISTORICAL RESOURCES (ARCHAEOLOGY)

I. Prior to Permit Issuance

A. Entitlements Plan Check

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

Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Archaeological Monitoring and Native American monitoring have been noted on the applicable construction documents through the plan check process.

B. Letters of Qualification have been submitted to ADD

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the archaeological monitoring program, as defined in the City of San Diego Historical Resources Guidelines (HRG). If applicable, individuals involved in the archaeological monitoring program must have completed the 40-hour HAZWOPER training with certification documentation.

2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the archaeological monitoring of the project meet the qualifications established in the HRG.

3. Prior to the start of work, the applicant must obtain written approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search (1/4 mile radius) has been completed. Verification includes, but is not limited to a copy of a confirmation letter from South Coastal Information Center, or, if the search was in-house, a letter of verification from the PI stating that the search was completed.

2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

3. The PI may submit a detailed letter to MMC requesting a reduction to the ¼ mile radius.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring; the Applicant shall arrange a Precon Meeting that shall include the PI, Native American consultant/monitor (where Native American resources may be impacted), Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified Archaeologist and Native American Monitor shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Archaeological Monitoring program with the Construction Manager and/or Grading Contractor.

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

2. Identify Areas to be Monitored

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.

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 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 Archaeological Monitor shall direct the contractor to temporarily divert all soil disturbing activities, including but not limited to digging, trenching, excavating or grading activities in the area of discovery and in the area reasonably suspected to overlay adjacent resources and immediately notify the RE or BI, as appropriate.

2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.

3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

4. No soil shall be exported off-site until a determination can be made regarding the significance of the resource specifically if Native American resources are encountered.

C. Determination of Significance

1. The PI and Native American consultant/monitor, where Native American resources are discovered shall evaluate the significance of the resource. If Human Remains are involved, follow protocol in Section IV below.

a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required.

b. If the resource is significant, the PI shall submit an Archaeological Data Recovery Program (ADRP) which has been reviewed by the Native American consultant/monitor, and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume. **Note: If a unique archaeological site is also an historical resource as defined in CEQA, then the limits on the amount(s) that a project applicant may be required to pay to cover mitigation costs as indicated in CEQA Section 21083.2 shall not apply.**

c. If the resource is not significant, the PI shall submit a letter to MMC indicating that artifacts will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that that no further work is required.

IV. Discovery of Human Remains

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

A. Notification

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

2. The PI shall notify the Medical Examiner after consultation with the RE, either in person or via telephone.

B. Isolate discovery site

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

2. The Medical Examiner, in consultation with the PI, will determine the need for a field examination to determine the provenance.

3. If a field examination is not warranted, the Medical Examiner will determine with input from the PI, if the remains are or are most likely to be of Native American origin.

C. If Human Remains **ARE** determined to be Native American

1. The Medical Examiner will notify the Native American Heritage Commission (NAHC) within 24 hours. By law, **ONLY** the Medical Examiner can make this call.

2. NAHC will immediately identify the person or persons determined to be the Most Likely Descendent (MLD) and provide contact information.

3. The MLD will contact the PI within 24 hours or sooner after the Medical Examiner has completed coordination, to begin the consultation process in accordance with CEQA Section 15064.5(e), the California Public Resources and Health & Safety Codes.

4. The MLD will have 48 hours to make recommendations to the property owner or representative, for the treatment or disposition with proper dignity, of the human remains and associated grave goods.

5. Disposition of Native American Human Remains will be determined between the MLD and the PI, and, if:

a. The NAHC is unable to identify the MLD, OR the MLD failed to make a recommendation within 48 hours after being notified by the Commission; OR;

b. The landowner or authorized representative rejects the recommendation of the MLD and mediation in accordance with PRC 5097.94 (k) by the NAHC fails to provide measures acceptable to the landowner, THEN,

c. In order to protect these sites, the Landowner shall do one or more of the following:

(1) Record the site with the NAHC;

(2) Record an open space or conservation easement on the site;

(3) Record a document with the County.

d. Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of such a discovery may be ascertained from review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and items associated and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to Section 5.c., above.

D. If Human Remains are **NOT** Native American

1. The PI shall contact the Medical Examiner and notify them of the historic era context of the burial.

2. The Medical Examiner will determine the appropriate course of action with the PI and City staff (PRC 5097.98).

3. If the remains are of historic origin, they shall be appropriately removed and conveyed to the San Diego Museum of Man for analysis. The decision for internment of the human remains shall be made in consultation with MMC, EAS, the applicant/landowner, any known descendant group, and the San Diego Museum of Man.

V. Night and/or Weekend Work

A. If night and/or weekend work is included in the contract

1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.

2. The following procedures shall be followed.

a. No Discoveries

In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSVR and submit to MMC via fax by 8AM of the next business day.

b. Discoveries

All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction, and IV – Discovery of Human Remains. Discovery of human remains shall always be treated as a significant discovery.

c. Potentially Significant Discoveries

If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction and IV-Discovery of Human Remains shall be followed.

d. The PI shall immediately contact MMC, or by 8AM of the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

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

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

2. The RE, or BI, as appropriate, shall notify MMC immediately.

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

VI. Post Construction

A. Preparation and Submittal of Draft Monitoring Report

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

a. For significant archaeological resources encountered during monitoring, the Archaeological Data Recovery Program shall be included in the Draft Monitoring Report.

b. Recording Sites with State of California Department of Parks and Recreation

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

2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.

3. The PI shall submit revised Draft Monitoring Report to MMC for approval.

4. MMC shall provide written verification to the PI of the approved report.

5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Artifacts

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

2. The PI shall be responsible for ensuring that all artifacts are analyzed to identify function and chronology as they relate to the history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.

3. The cost for curation is the responsibility of the property owner.

C. Curation of artifacts: Accession Agreement and Acceptance Verification

1. The PI shall be responsible for ensuring that all artifacts associated with the survey, testing and/or data recovery for this project are permanently curated with an appropriate institution. This shall be completed in consultation with MMC and the Native American representative, as applicable.

2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.

3. When applicable to the situation, the PI shall include written verification from the Native American consultant/monitor indicating that Native American resources were treated in accordance with state law and/or applicable agreements. If the resources were reinterred, verification shall be provided to show what protective measures were taken to ensure no further disturbance occurs in accordance with Section IV – Discovery of Human Remains, Subsection 5.

D. Final Monitoring Report(s)

1. The PI shall submit one copy of the approved Final Monitoring Report to the RE or BI as appropriate, and one copy to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.

2. The RE shall, in no case, issue the Notice of Completion and/or release of the Performance Bond for grading until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

BIOLOGICAL RESOURCES (SENSITIVE SPECIES/SENSITIVE HABITAT)

BR-1 General Avian

Prior to the issuance of a Notice to Proceed for a subdivision, or any construction permits, such as Demolition, Grading, or Building, or beginning any construction-related activity, the mayor (or appointed designee) shall verify that the following project requirements are shown on the construction plans:

To avoid any direct impacts to nesting birds (i.e., Cooper's hawk), removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to September 15). If removal of habitat in the proposed area of disturbance must occur during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction (precon) survey shall be conducted within 10 calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results of the precon survey to City DSD for review and approval prior to initiating any construction activities.

If nesting birds are detected, an avoidance buffer of 300 feet for active Cooper's hawks nests would be implemented until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. An avoidance buffer for active passerine nests may be up to 300 feet, or as appropriate. Reductions in the nest buffer distance for passerines may be appropriate depending on various factors (i.e., the avian species involved, ambient levels of human activity, and screening vegetation), and buffers should be determined by the Qualified Biologist. A letter report or mitigation plan in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e. appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that the take of birds or eggs or disturbance of breeding activities is avoided. The report or mitigation plan shall be submitted to the City DSD for review and approval and implemented to the satisfaction of the City. The City's MMC Section and Biologist shall verify and approve that all measures identified in the report or mitigation plan are in place prior to and/or during construction. If nesting birds are not detected during the precon survey, no further mitigation is required.

BR-2 Biological Resource Protection during Construction

I. Prior to Construction

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

B. Preconstruction Meeting – The Qualified Biologist shall attend the preconstruction meeting, discuss the project's biological monitoring program, and arrange to perform any follow

up mitigation measures and reporting including site-specific monitoring, restoration or revegetation, and additional fauna/flora surveys/salvage.

C. Biological Documents – The Qualified Biologist shall submit all required documentation to MMC verifying that any special mitigation reports including but not limited to, maps, plans, surveys, survey timelines, or buffers are completed or scheduled per City Biology Guidelines, MSCP, Environmentally Sensitive Biological Documents – The Qualified Biologist shall submit all required documentation to MMC verifying that any special mitigation reports including but not limited to, maps, plans, surveys, survey timelines, or buffers are completed or scheduled per City Biology Guidelines, MSCP, Environmentally Sensitive Lands (ESL) Ordinance, project permit conditions; CEQA; endangered species acts; and/or other local, state or federal requirements.

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

E. Avian Protection Requirements – To avoid any direct impacts to nesting birds (i.e., Cooper's hawk), removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to September 15). If removal of habitat in the proposed area of disturbance must occur during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction survey shall be conducted within 10 calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results of the pre-construction survey to City Development Services Department (DSD) for review and approval prior to initiating any construction activities. If nesting birds are detected, an avoidance buffer of 300 feet for active Cooper's hawks nests would be implemented until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. An avoidance buffer for active passerine nests may be up to 300 feet, or as appropriate. Reductions in the nest buffer distance for passerines may be appropriate depending on various factors (i.e., the avian species involved, ambient levels of human activity, and screening vegetation), and buffers should be determined by the Qualified Biologist. A letter report or mitigation plan in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e., appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities is avoided. The report or mitigation plan shall be submitted to the City for review and approval and implemented to the satisfaction of the City. The City's MMC Section and Biologist shall verify and approve that all measures identified in the report or mitigation plan are in place prior to and/or during construction.

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

G. Education – Prior to commencement of construction activities, the Qualified Biologist shall meet with the owner/permittee or designee and the construction crew and conduct an on-site educational session regarding the need to avoid impacts outside of the approved construction area and to protect sensitive flora and fauna (e.g., explain the avian and wetland buffers, flag system for removal of invasive species or retention of sensitive plants, and clarify acceptable access routes/methods and staging areas, etc.).

II. During Construction

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

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

BR-3: Prior to the issuance of a grading permit, or any construction permits, such as demolition, grading, or building, or beginning any construction-related activity on-site, the applicant shall provide mitigation in the form of 0.035 acre of Tier III-A or better habitat and 0.085 acre of Tier III-B or better habitat within the MHPA (Tables 4.4-4). This mitigation shall be satisfied through the purchase of Habitat Acquisition Fund (HAF) mitigation credits. The applicant shall purchase 0.12 mitigation credits through the City's HAF program. The receipt for credits purchased shall be provided to the City prior to issuance of any grading or construction permit.

PALEONTOLOGICAL RESOURCES

PAL-1 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 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 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.

NOISE (HVAC)

N-1: Prior to the issuance of a building permit, the applicant, or its designee, shall prepare an acoustical study(s) of proposed mechanical equipment, which shall identify all noise-generating equipment, predict noise levels at property lines from all identified equipment, and recommend measures to be implemented (e.g., enclosures, barriers, site orientation), as necessary, to comply with the City Noise Ordinance Section 59.5.0401.

Passed by the Council of The City of San Diego on OCT 17 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☑	☐	☐	☐
Lorie Zapf	☑	☐	☐	☐
Chris Ward	☐	☑	☐	☐
Myrtle Cole	☑	☐	☐	☐
Mark Kersey	☑	☐	☐	☐
Chris Cate	☑	☐	☐	☐
Scott Sherman	☑	☐	☐	☐
David Alvarez	☑	☐	☐	☐
Georgette Gomez	☐	☑	☐	☐

Date of final passage OCT 17 2017.

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

AUTHENTICATED BY:

(Seal)

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

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

By _____, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311370