

ATTACHMENT A
Woodward 46 Specific Plan Project
Summary of Potential Impacts and Mitigation Measures

Biological Resources

California Coastal Gnatcatcher (Impact BIO-1)

MM-BIO-1a An updated presence/absence protocol survey of the project site and a 500-foot buffer around the project site shall be conducted by a qualified biologist with a valid United States Fish and Wildlife Service 10(a)(1)(A) permit to further evaluate the coastal California gnatcatcher (CAGN) territories that could be affected by short term project construction activities, including vegetation clearance, and long term habitat loss and indirect impacts. In accordance with the USFWS survey protocol, a minimum of six breeding season surveys will be conducted at least 1 week apart from March 15, through June 30, pending the anticipated construction timeline for the project. The results of the survey shall be submitted to the City and USFWS upon completion.

If CAGN is detected during the protocol survey, vegetation clearing shall only be conducted between September 1 and February 14, outside of the breeding season for CAGN. If vegetation clearing must start outside of those dates, then focused nesting surveys would be conducted prior to vegetation clearing for the project site and a 500-foot buffer zone. No more than 3 days prior to the clearing of vegetation, a qualified biologist shall conduct a pre-construction clearance survey for CAGN to confirm that the vegetation on-site is not occupied by the species. If nests are found, they would be avoided by establishing a 500-foot non-disturbance buffer around the nest. Vegetation clearance may continue with regular biological monitoring if there is no indication of disturbance to the nest(s). If the vegetation clearance is potentially disruptive to active nests a larger buffer may be implemented as determined by the qualified biologist. If CAGN are observed moving through the area during vegetation clearing activities, the project biologist may delay the removal of vegetation and/or grading until CAGN has left the area of their own volition.

If CAGN is found to be within the survey area (project site plus a 500-foot buffer) during protocol or pre-construction surveys, the following avoidance and minimization measures shall be implemented.

- a) To reduce potential noise impacts to nesting CAGN, a qualified biologist shall monitor noise levels with a noise monitoring device at an appropriate distance from the nest to determine if construction activity noise is above 60 dBA Leq, the standard level requested by the USFWS, or if noise levels above 60 dBA Leq have the potential to affect any CAGN nests.
- b) If/when an active CAGN nest is identified, an acoustician shall monitor noise at the edge of construction as directed by the qualified biologist. If noise levels continue to exceed 60 dBA Leq, the acoustician shall consult with the qualified biologist and provide requirements for the construction contractor to make

operational and barrier changes to reduce noise levels to 60 dBA Leq during the breeding season (February 15 through August 31). Noise monitoring will occur during operational changes and installation of barriers, as needed, to ensure their effectiveness. If the noise meets or exceeds the 60 dBA Leq threshold, or if the biologist determines that the activities in general are disturbing the nesting activities, the biologist shall have the authority to halt construction and shall consult with the USFWS to devise methods to reduce the noise and/or disturbance in the vicinity. This may include methods such as, but not limited to, turning off vehicle engines and other equipment whenever possible to reduce noise, installing a protective noise barrier between the nesting coastal CAGN and the activities, and working in other areas until the young have fledged.

All active nests will be reported within 24 hours to the USFWS upon detection.

MM-BIO-1b Long-Term Open Space Management

A long-term open space management plan shall be developed to minimize impacts of the residential development on the adjacent coastal California gnatcatcher (CAGN) and Diegan Coastal Sage scrub habitat. The adjacent area falls within a Multiple Habitat Conservation Program Hardline Reserve, occupied by CAGN, and additional mitigation measures are necessary to minimize impacts associated with increased human and domestic pet presence from the project. The plan will include a program of education to reduce domestic and feral cat encroachment (using the program developed by the American Society for the Prevention of Cruelty to Animals). Use of invasive exotic plant species in landscaped areas adjacent to or near sensitive vegetation communities shall be restricted. The applicant shall encourage the use of native species in the landscaping plan and will avoid the use of species listed in Lists A & B of the California Invasive Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999. This list includes such species as pepper trees (*Schinus mole*), pampas grass (*Cortaderia selloana*), fountain grass, ice plant (*Carpobrotus sp.*), myoporum (*myoporum sp.*), black locust (*Robinia pseudoacacia*), capeweed (*Arctotheca calendula*), tree of heaven (*Ailanthus altissima*), periwinkle (*Viola major*), sweet alyssum (*Lobularia maritima*), English ivy (*Hedera helix*), French broom (*Genista monspessulana*), Scotch broom (*Cytisus scoparius*), and Spanish broom (*Spartium junceum*). The plan shall also address permanent residential lighting to be directed away from the open space.

Crotch's Bumble Bee (Impact BIO-2)

MM-BIO-2 Focused surveys found the Diegan Coastal Sage Scrub on site to be occupied by Crotch's bumble bee (CBB). Thus, there is potential for "take" of CBB and adverse impacts may occur through the removal of occupied habitat. However, the project would incorporate the following CBB avoidance measures to avoid "take" and significant impacts should the species remain a candidate for state listing.

Avoidance Measure for Crotch's Bumble Bee

Prior to the Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, The City shall verify the following project

requirements regarding the CBB are shown on the construction plans. Should this species no longer be a potential candidate for listing at the time of the preconstruction meeting, then no avoidance measures shall be required.

To avoid impacts on CBB, removal of habitat in the proposed area of disturbance must occur outside of the Colony Active Period (April 1 through August 31). If the removal of habitat in the proposed area of disturbance must occur during the Colony Active Period, a Qualified Biologist shall conduct a pre-activity (defined as any habitat disturbance) survey no more than three days prior to the initiation of construction activities to determine the presence or absence of CBB within the proposed area of disturbance.

A Qualified Biologist must demonstrate the following qualifications: at least 40 hours of experience surveying for bee or other co-occurring aerial invertebrate species (such as Quino checkerspot butterfly) and have completed a CBB detection/identification training by an expert CBB entomologist; or the biologist must have at least 20 hours of experience directly observing CBB.

The pre-activity survey shall consist of photographic surveys following California Department of Fish and Wildlife (CDFW) guidance (i.e., Survey Considerations for California Endangered Species Act [CESA] Candidate Bumble Bee Species, dated June 6, 2023). The surveys shall consist of passive methods unless a Memorandum of Understanding is obtained.

If additional activities (e.g., capture or handling) are deemed necessary to identify bumble bees of an unknown species that may be CBB, then the Qualified Biologist shall obtain the required authorization via a Memorandum of Understanding or Scientific Collecting Permit pursuant to CDFW Survey Considerations for CESA Candidate Bumble Bee Species (CDFW 2023). Survey methods that involve lethal take of species are not acceptable.

If pre-activity surveys identify CBB individuals on-site, the Qualified Biologist shall notify and consult with CDFW to establish, monitor, and maintain no-work buffers around the associated floral/nest resources. The size and configuration of the no-work buffer shall be based on the best professional judgment of the Qualified Biologist in consultation with CDFW. Construction activities shall not occur within the no-work buffers until the bees appear no longer active (i.e., associated floral resources appear desiccated and no bees are seen flying for three consecutive days indicating dispersal from the area). Take of any endangered, threatened, candidate species that results from the project is prohibited, except as authorized by State law (Fish and Game Code section 86, 2062, 2067, 2068, 2080, 2085; California Code Regulations, Title 14, section 786.9) under CESA.

Survey data shall be submitted by the Qualified Biologist to the California Natural Diversity Database (CNDDDB) in accordance with the Memorandum of Understanding with CDFW, or Scientific Collecting Permit requirements, as applicable.

Crotch's Bumble Bee Habitat

Should the species remain a candidate for listing, mitigation for the loss of CBB occupied Diegan Coastal Sage Scrub shall be conducted in conjunction with the Diegan coastal sage scrub mitigation described in MM-BIO-6. Specifically, the Diegan coastal sage scrub mitigation shall include habitat compensation at a minimum 1:1 ratio to also benefit the CBB. This mitigation may be satisfied through off-site acquisition, in lieu fees, purchase of credits from an approved mitigation bank, or a combination thereof. If necessary, habitat enhancement also may be incorporated, to be described in a Habitat Management and Monitoring Plan (i.e. planting of native Diegan coastal sage scrub flowering plant species known to support bumble bee populations, removal of invasive species, etc.). This species shall also be included in the Worker Environmental Awareness Program educational program described in MM-BIO-3a and BMP's implemented per MM-BIO-3c.

Direct and Indirect Impacts to Sensitive Wildlife Species (Impact BIO-3)

MM-BIO-3a Worker Environmental Awareness Program (WEAP)

The applicant shall implement a Worker Environmental Awareness Program (WEAP) for the construction crew that will be developed by a qualified biologist. Each employee (including temporary, contractors, and subcontractors) will receive the WEAP presentation on the first day of project work. They will be advised of sensitive species in the area and avoidance measures being implemented to protect them at the site. At a minimum, the WEAP will include the following topics: occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of federal and State laws, reporting requirements, and project features and conditions designed to reduce direct and indirect impacts to these species, role of the Biological Monitor, and worker responsibilities to maintain compliance with mitigation measures while working at the site.

MM-BIO-3b Work Limit Delineations

Approved construction work area limits shall be delineated and marked clearly, by flagging or temporary orange construction fencing, in the field prior to vegetation removal. The marked boundaries shall be maintained and clearly visible to personnel on foot and by heavy equipment operators. Fencing shall be placed on the impact side of the work area to reduce the potential for encroachment and additional vegetation loss within adjacent open space. Fencing shall be put in place by a qualified surveyor per the project applicant's approved construction and grading plans. All temporary fencing shall be removed only after the conclusion of all grading, clearing, and construction. Employees shall strictly limit their activities and vehicles to the designated project areas, staging areas, and routes of travel. The biological monitor shall verify that the limits of construction have been properly staked and are readily identifiable. Intrusion by unauthorized vehicles outside of construction limits shall be prohibited, with control exercised by an on-site foreman. Access routes to the construction area outside of work hours shall be blocked with physical barriers, such as concrete blocks or large equipment.

MM-BIO-3c Biological Monitor and Construction BMPs

A City-approved, qualified biologist shall be present during all vegetation clearing and other activities with the potential to affect coastal California gnatcatcher (CAGN), orange throated whiptails, coastal whiptails, Bryant's woodrat, Coopers hawks, and southern rufus-crowned sparrow, nesting birds, and any other sensitive plant or wildlife resource, and will monitor the project for avoidance of unanticipated impacts to the aforementioned species and their habitats. Standard construction Best Management Practices will be implemented by the contractor to minimize potential impacts to sensitive species. The biologist shall have the authority to halt all associated project activities that may be in violation of the protective measures. Daily monitoring logs shall be maintained and a monthly report of compliance with biological resource measures will be provided to the City during construction. Standard Construction Best Management Practices shall include the following:

- Vehicle speeds will not exceed 10 miles per hour (mph) adjacent to CAGN habitat. Clear signage will be installed and maintained throughout the construction period.
- Placement of drip pans under parked equipment and vehicles.
- Regular inspection and maintenance of equipment to avoid spills and immediate containment of any spills.
- Chemicals, herbicides and pesticides will not be used.
- Pets and firearms will not be allowed at the site.
- Trash will be removed from the site daily or be stored in wildlife proof containers
- Stormwater protection (i.e., straw waddles, silt fence) will be employed to prevent spills, runoff, or sediment from entering nearby aquatic habitats. These materials will be weed free and no project debris or rubbish will be allowed to enter into or be placed where it may be washed by rainfall or runoff in the wetlands.
- Staging/storage areas for equipment and materials will be located at least 100 feet away from the riparian areas. Equipment will be checked and maintained daily to prevent leaks of pollutants into the wetlands.
- No equipment maintenance will be carried out within 100 feet of the riparian area.
- All pipes, culverts, or similar structures with a 4-inch diameter or greater that are stored on the construction site overnight shall be thoroughly inspected for wildlife or nesting birds before the pipe is subsequently curried, capped, or otherwise used or moved in any way.
- To prevent inadvertent entrapment of wildlife during construction, all excavated, wells, steep-walled holes, or trenches more than 2 feet deep shall be covered with plywood or similar materials at the close of each working day.
- Any construction lighting will be directed toward the work area and away from adjacent habitats.

MM-BIO-3d Woodrat Middens

Woodrat middens (nests) are large nests or dens made of woody debris, such as sticks, dead cacti, and bark. Middens were observed throughout the project site

and within the project impact area. The project may contain both big-eared woodrat Bryant's woodrat and all middens will be treated as potentially sensitive. Within 30 days of initial site disturbance, a pre-construction survey shall be conducted for woodrat middens. All occupied woodrat middens shall be mapped and flagged for avoidance to the extent feasible, with a minimum of 10-feet surrounding the active midden. If avoidance is not feasible, middens will be disturbed "daylighted" by a qualified biologist one night before anticipated vegetation removal to allow for the rats to escape and passively relocate prior to disturbance of the area.

Nesting Birds and Raptors (Impact BIO-4)

MM-BIO-4 If site clearing activities are conducted between January 1 and August 31, a qualified biologist shall conduct a nesting bird survey no more than 3 days prior to the start of such activities to identify actively nesting birds within the project site and a 500-foot buffer around the project site. If any nests are found, their locations shall be flagged and an appropriate avoidance buffer, ranging in size from 25 to 50 feet for passerines, and up to 500 feet for raptors depending upon the species and the proposed work activity. The non-disturbance buffer zone shall be determined and demarcated by a qualified biologist with bright orange construction fencing or other suitable flagging materials. Active nests shall be monitored at a minimum of once per week until it has been determined that the nest is no longer being used by either the young or adults. No disturbance shall occur within this buffer until the qualified biologist confirms that breeding/nesting is completed, and all the young have fledged. If project activities must occur within the buffer, activities shall be conducted at the discretion of the qualified biologist and with monitoring and management to confirm that nesting birds and the nests are not disturbed. If no nesting birds are observed during the nesting survey or during other monitoring activities, then no further actions shall be necessary. A follow-up survey will be needed if site clearing does not occur within 3 days after the initial survey and/or a pause in construction activity occurs for more than 7 days.

Indirect Impacts to Sensitive Species (Impact BIO-5)

Implementation of mitigation measures MM-BIO-3a through MM-BIO-3d, described above would reduce potential indirect impacts to sensitive species.

Impact to Sensitive Habitat (Impact BIO-6)

MM-BIO-6 The permanent loss of 5.5 acres of Diegan Coastal Sage Scrub, and Disturbed Diegan Coastal Sage Scrub shall be mitigated at a minimum 1:1 ratio. Section 5.2.1 of the Draft Subarea Plan for San Marcos references the preferred order of mitigation to be on-site mitigation, off-site acquisition, in-lieu fees, and mitigation credits. For mitigation purposes, the Diegan Coastal Sage Scrub and Disturbed Diegan Coastal Sage Scrub acreages on the project site that would be impacted have been combined as these two vegetation communities are considered to have similar sensitivity under the Multiple Habitat Conservation Program. Thus, 5.5 acres of occupied coastal California gnatcatcher Diegan Coastal Sage Scrub will be preserved by the project applicant through off-site acquisition, in lieu fees, a purchase of credits from Buena Creek Mitigation Bank or another approved

mitigation bank, or a combination thereof as approved by the City of San Marcos Planning Manager and wildlife agencies prior to issuance of the grading permit. If on site or off-site habitat mitigation will be completed by the Applicant to satisfy the compensatory mitigation requirements, it shall be carried out in accordance with a Habitat Mitigation and Monitoring Plan (HMMP) that outlines the strategy for enhancement and maintenance of the habitat for locally sensitive species occupying Diegan Coastal Sage Scrub.

Cultural Resources

Potential Impact to Archeological Resources (Impact CR-1)

MM-CR-1: Unanticipated Discovery Procedures

In the event of the unanticipated discovery of cultural resources, all ground disturbing activity at that location shall temporarily halt or be diverted. Ground disturbing activities shall be temporarily directed away from the area of discovery for a reasonable amount of time to allow a determination of the resource's potential significance. A Qualified Archaeologist shall be retained to assess the discovery. If the resource is determined to be associated with Native American culture, it will be considered a tribal cultural resource and subject to MM-TCR-8. Non-Native American resources discovered during construction shall follow the procedures below. If a discovery of a previously unknown resource is determined to be both a tribal cultural resource and a potentially significant archaeological resource that is associated with Native American culture, then the Qualified Archaeologist, Tribes, Native American monitors, and City shall coordinate on appropriate treatment.

Isolates and clearly non-significant archaeological resources (as determined by the Qualified Archaeologist) will be minimally documented in the field. All unearthed archaeological resources will be collected, temporarily stored in a secure location until analysis and documentation are complete. If a determination is made that the archaeological resources are considered potentially significant by the Qualified Archaeologist, then an adequate artifact sample to address research avenues previously identified for sites in the area will be collected using professional archaeological collection methods.

In the event that curation of archaeological resources is required by a superseding regulatory agency, curation shall be conducted by an approved local facility within San Diego County and the curation shall be guided by California State Historical Resources Commission's Guidelines for the Curation of Archaeological Collections. The City shall provide the Applicant/Owner final curation language and guidance on the project grading plans prior to issuance of the grading permit, if applicable, during project construction. The Applicant/Owner shall be responsible for all repatriation and curation costs and provide to the City written documentation from the curation facility that the curation has been completed.

MM-CR-2: Human Remains

As specified by California Health and Safety Code Section 7050.5, if human remains, or remains that are potentially human, are found on the project site during ground disturbing activities or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the San Diego County Medical Examiner's Office by

telephone. No further excavation or disturbance of the discovery or any nearby area reasonably suspected to overlie adjacent remains (as determined by the Qualified Archaeologist and/or the TCA Native American monitor) shall occur until the Medical Examiner has made the necessary findings as to origin and disposition pursuant to Public Resources Code 5097.98.

If such a discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected (as determined by the Qualified Archaeologist and/or the TCA Native American monitor), and consultation and treatment could occur as prescribed by law. As further defined by State law, the Medical Examiner will determine within two working days of being notified if the remains are subject to his or her authority. If the Medical Examiner recognizes the remains to be Native American, and not under his or her jurisdiction, then he or she shall contact the Native American Heritage Commission by telephone within 24 hours. The Native American Heritage Commission will make a determination as to the Most Likely Descendent, who shall be afforded 48 hours from the time access is granted to the discovery site to make recommendations regarding culturally appropriate treatment.

If suspected Native American remains are discovered, the remains shall be kept in situ (in place) until after the Medical Examiner makes its determination and notifications, and until after the Most Likely Descendent is identified, at which time the archaeological examination of the remains shall only occur on site in the presence of the Most Likely Descendent. The specific locations of Native American burials and reburials will be proprietary and not disclosed to the general public. According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). In the event that the Applicant/Owner and the Most Likely Descendant are in disagreement regarding the disposition of the remains, State law will apply, and the mediation process will occur with the NAHC. In the event that mediation is not successful, the landowner shall rebury the remains at a location free from future disturbance (see Public Resources Code Section 5097.98(e) and 5097.94(k)).

Noise

Noise Levels During Rock Drilling and Blasting (Impact N-1)

MM-N-1 Prior to issuance of a blasting permit, the project applicant or contractor shall provide the final location of the construction equipment, topography and construction schedule to the Planning Division. If the rock drill is shown to be located within 160 feet from a sensitive land use's property line, an acoustical engineer shall prepare a noise assessment to determine whether noise levels in excess of the 75 dBA standard would occur during construction.

If the rock drilling and blasting noise assessment determines noise levels at the affected property lines would exceed 75 dBA, the acoustical engineer shall develop a mitigation plan to ensure during rock drilling and blasting would be below 75 dBA at the property line. Potential measures to reduce drilling and blasting noise levels could include: 1) construction of a temporary noise barrier of solid non-gaping material ranging from 8 to 12 feet in height along any property line where the impacts could occur; 2) limits on usage of the equipment (amount of time used and/or the location in respect to the property line) or other measures to ensure the

levels would be below 75 dBA. The mitigation plan shall be submitted to the Planning Division and implemented by the contractor.

Noise Levels During Rock Crushing (Impact N-2)

MM-N-2 Prior to issuance of a Conditional Use Permit for a rock crusher, the project applicant or contractor shall provide the final location and rock crusher type to the Planning Division. If the rock crusher is shown to be located within 400 feet of a single-family residential use without shielding, an acoustical engineer shall prepare a noise assessment to determine whether noise levels would be above the applied thresholds of 60 dBA at any existing single family residential use and 65 dBA for multi-family.

If the rock crushing noise assessment determines noise levels at the affected property lines would exceed the standards, the acoustical engineer shall develop a mitigation plan to reduce noise levels to 60 dBA at any existing single-family use and 65 dBA at any existing multi-family use. Mitigation may include sound barriers, sound absorbing materials, and/or operational limits on the crusher equipment's usage. The mitigation plan shall be submitted to the Planning Division and implemented by the contractor.

Tribal Cultural Resources

Tribal Cultural Resources (Impact TCR-1)

Mitigation measures MM-TCR-1 through MM-TCR-12 would reduce potential tribal cultural resources impacts to below a level of significance.

MM-TCR-1 Project-Specific Ethnographic Synthesis. The Applicant shall fund the preparation of a project-specific ethnographic synthesis, not to exceed what is described in the confidential proposal provided by the Rincon Band of Luiseño Indians dated August 27, 2024. No later than 30 days after the final Project approval, the Applicant shall extend a written offer to the Rincon Band of Luiseño Indians to enter into an agreement with their ethnographer to conduct and prepare the ethnographic synthesis in accordance with the aforementioned proposal. In the event of a dispute between the parties in entering into the agreement for the ethnographic synthesis, and after a good faith and reasonable effort, the City shall serve as the final arbiter. The City will determine the scope and content of an ethnographic synthesis in that event.

The synthesis will draw from oral histories, elder knowledge, and other sources of confidential Indigenous knowledge that relate to the tribal cultural resource affected by the proposed project. The ethnographer shall be afforded up to 90 days following funding of the ethnography to carry out any field visits with appropriate tribal representatives. After 90 days, or sooner if the ethnographer completed the field studies, the Applicant shall be permitted to proceed with ground disturbing activities and construction of the project while non-field-based data gathering, such as ethnographic interviews of informants and review of tribal documents, is being carried out. Upon completion, a public (redacted) version of the ethnographic

synthesis shall be submitted to the California Historical Resources Information System and the City. The final non-redacted study shall belong to the Rincon Band of Luiseño Indians.

MM-TCR-2 Monitoring Agreement. Prior to the issuance of a Grading Permit, or ground disturbing activities, the Applicant/Owner shall enter into a Monitoring Agreement with a Traditionally and Culturally Affiliated Native American Tribe (TCA Tribe), identified in consultation with the City. The purpose of the Monitoring Agreement shall be to formalize protocols and procedures between the Applicant/Owner and the TCA Tribe for the monitoring for Native American human remains, funerary objects, cultural and/or religious landscapes, ceremonial items, traditional gathering areas, and other tribal cultural resources. Such resources may be located within and/or discovered during ground disturbing and/or construction activities for the proposed project, including any additional culturally appropriate archaeological studies, excavations, geotechnical investigations, grading, preparation for wet and dry infrastructure, and other ground disturbing activities. Any project-specific Monitoring Plans and/or excavation plans prepared by the project archaeologist shall include the TCA Tribe requirements for protocols and protection of tribal cultural resources that were agreed to during the tribal consultation.

The landowner shall relinquish ownership of all non-burial related tribal cultural resources collected during construction monitoring and from any previous archaeological studies or excavations on the project site to the TCA Tribe for proper treatment and disposition per the Monitoring Agreement, unless ordered to do otherwise by responsible agency or court of competent jurisdiction. The requirement and timing of such release of ownership, and the recipient thereof, shall be reflected in the Monitoring Agreement. If the TCA Tribe does not accept the return of the cultural resources, then the cultural resources will be subject to curation.

MM-TCR-3 Construction Monitoring. Prior to the issuance of a Grading Permit or ground disturbing activities, the Applicant/Owner or Grading Contractor shall provide written documentation (either as signed letters, contracts, or emails) to the City's Planning Division stating that the Rincon Band and San Luis Rey Band have been retained at the Applicant/Owner or Grading Contractor's expense to implement the construction monitoring program, as described in the Monitoring Agreement. Native American monitoring shall include one monitor from the Rincon Band of Luiseno Indians and one monitor from the San Luis Rey Band of Luiseno Indians simultaneously. In the event that either tribe chooses not to enter into an agreement or fails to respond to the offer, the City shall allow construction to proceed without the Native American monitor(s) as long as the offer was extended and documented.

The monitors shall be provided at least 72 hours' notice of the initiation of construction and be kept reasonably apprised of changes to the construction schedule. In the event that a monitor is not present at the scheduled time, work can continue without the monitor present, as long as the notice was given and documented.

The TCA Native American monitor shall be invited to attend all applicable pre-construction meetings with the General Contractor and/or associated subcontractors to present the construction monitoring program. The TCA Native American monitor shall be present on site during grubbing, grading, trenching, and/or other ground disturbing activities that occur in areas of native soil or other permeable natural surfaces that have the potential to unearth any evidence of potential archaeological resources or tribal cultural resources. In areas of artificial paving, the TCA Native American monitor shall be present on site during grubbing, grading, trenching, and/or other ground disturbing activities that have the potential to disturb the original pre-project ground surface to identify any evidence of potential tribal cultural resources. No monitoring of fill material, existing or imported, will be required if the General Contractor or developer can provide documentation to the satisfaction of the City that all fill materials being utilized at the site are either: 1) from existing commercial (previously permitted) sources of materials; or 2) are from private or other non-commercial sources that have been determined to be absent of tribal cultural resources by the TCA Native American monitor.

The Qualified Archaeologist (CR-1) and TCA Native American monitor shall maintain ongoing collaborative coordination with one another during all ground disturbing activities. The requirement for the construction monitoring program shall be noted on all applicable construction documents, including demolition plans, grading plans, etc. The Applicant/Owner or Grading Contractor shall provide written notice to the Planning Division and the TCA Tribes, preferably through e-mail, of the start and end of all ground disturbing activities.

- MM-TCR-4** Exclusionary Fencing of ESA. Prior to the commencement of clearing and grubbing of the project area, the contractor shall install high visibility temporary exclusionary fencing around the western cultural feature under the direction of the Qualified Archaeologist and TCA Native American monitor. The contractor shall be responsible for ensuring that the fence is maintained throughout the duration of ground disturbing activity associated with project construction. The feature shall be designated as an Environmentally Sensitive Area on grading plans.
- MM-TCR-5** Monitoring of Activity. When heavy equipment operation or construction-related activity that do not involve ground disturbance reach 100 feet of the eastern cultural feature, a TCA Native American monitor must be present. The purpose of the monitoring of non-ground disturbing activity at this location is to ensure that personnel do not inadvertently impact the resource. Monitoring of non-ground disturbing activity shall not be required beyond 100 feet of the eastern cultural feature.
- MM-TCR-6** Capping. Prior to the commencement of ground disturbing activities associated with project construction, the contractor shall, under the direction of the Qualified Archaeologist and TCA Native American monitor, cap the eastern cultural feature. The cap shall be composed of a layer of geotextile or geogrid on the surface of the feature, followed by at least 10 feet of culturally sterile soil.
- MM-TCR-7** Controlled Grading. Grading plans for the project construction shall direct the contractor to use controlled grading methods within 500 feet of the eastern and

western cultural features. Controlled grading will involve use of a small piece of equipment or a road grader to peel away native soil using shallow cuts made in approximately five-inch-deep layers. The grading equipment will push the shallow cuts of soil to the outside of the cultural deposit area. This deposited soil may be sampled and screened to ensure adequate detection of any cultural materials that may be present. The Qualified Archaeologist and TCA Native American monitor will direct the controlled grading process, including the pace of the grading and the depth of layers to be removed. If potential tribal cultural resources are encountered, the procedures in Mitigation Measure TCR-7 shall apply. If no cultural deposits are encountered, the road grader will continue to make passes until one of two conditions are met (whichever occurs first): 1) Grading will continue to a depth of 30 centimeters below the depth of any recorded artifacts, suggesting an end to the potential for cultural deposits; or 2) non-cultural formational soils are encountered that predate any human occupation of this location. Once the cultural deposit has been completely removed, the controlled grading process will be terminated and mass grading may proceed.

MM-TCR-8 Unanticipated Discovery Procedures. TCA Native American monitors may temporarily halt or divert ground disturbing activities if previously unknown tribal cultural resources are discovered during construction activities. Ground disturbing activities shall be temporarily directed away from the area of discovery for a reasonable amount of time to allow a determination of the resource's potential significance. If the resource is determined to be not associated with Native American culture, it will be subject to MM CR-2. Native American tribal cultural resources discovered during construction shall follow the procedures below. If a discovery of a previously unknown resource is determined to be both a tribal cultural resource and a potentially significant archaeological resource that is associated with Native American culture (subject to MM-CR-2), then the Qualified Archaeologist, TCR Tribes, TCR monitors, and City shall coordinate on appropriate treatment.

All unearthed tribal cultural resources will be collected, temporarily stored in a secure location, and repatriated according to the consulting tribes, unless ordered to do otherwise by responsible agency or court of competent jurisdiction.

If a determination is made that the tribal cultural resources are considered potentially significant by the TCA Tribe and the TCA Native American monitor, then the City and the TCA Tribe shall determine, in consultation with the Applicant/Owner, the culturally appropriate treatment of those resources.

All sacred sites and significant tribal cultural resources encountered within the project area shall be avoided and preserved as the preferred mitigation. If avoidance of the resource is determined to be infeasible by the City as the Lead Agency, then the City shall require additional culturally appropriate mitigation to address the negative impact to the resource. The TCA Tribe shall be notified and consulted regarding the determination and implementation of culturally appropriate mitigation. Any cultural materials that cannot be avoided or preserved in place as the preferred mitigation shall be temporarily stored in a secure location on site, and repatriated according to the terms of the Monitoring Agreement, unless ordered to do otherwise by a responsible agency or court of competent

jurisdiction. The removal of any artifacts from the project site will be inventoried with oversight by the TCA Native American monitor.

MM-TCR-9

Human Remains. As specified by California Health and Safety Code Section 7050.5, if human remains, or remains that are potentially human, are found on the project site during ground disturbing activities or during archaeological work, the person responsible for the excavation, or his or her authorized representative, shall immediately notify the San Diego County Medical Examiner's Office by telephone. No further excavation or disturbance of the discovery or any nearby area reasonably suspected to overlie adjacent remains (as determined by the Qualified Archaeologist and/or the TCA Native American monitor) shall occur until the Medical Examiner has made the necessary findings as to origin and disposition pursuant to Public Resources Code 5097.98.

If such a discovery occurs, a temporary construction exclusion zone shall be established surrounding the area of the discovery so that the area would be protected (as determined by the Qualified Archaeologist and/or the TCA Native American monitor), and consultation and treatment could occur as prescribed by law. As further defined by State law, the Medical Examiner will determine within two working days of being notified if the remains are subject to his or her authority. If the Medical Examiner recognizes the remains to be Native American, and not under his or her jurisdiction, then he or she shall contact the Native American Heritage Commission by telephone within 24 hours. The Native American Heritage Commission will make a determination as to the Most Likely Descendent, who shall be afforded 48 hours from the time access is granted to the discovery site to make recommendations regarding culturally appropriate treatment.

If suspected Native American remains are discovered, the remains shall be kept in situ (in place) until after the Medical Examiner makes its determination and notifications, and until after the Most Likely Descendent is identified, at which time the archaeological examination of the remains shall only occur on site in the presence of the Most Likely Descendent. The specific locations of Native American burials and reburials will be proprietary and not disclosed to the general public. According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). In the event that the Applicant/Owner and the Most Likely Descendant are in disagreement regarding the disposition of the remains, State law will apply, and the mediation process will occur with the NAHC. In the event that mediation is not successful, the landowner shall rebury the remains at a location free from future disturbance (see Public Resources Code Section 5097.98(e) and 5097.94(k)).

MM-TCR-10

Reburial. Prior to the approval of grading plans, the Applicant shall designate a reburial location onsite and note the location as excluded from construction-related activity on grading plans. The reburial location shall be used to rebury any cultural materials encountered during monitoring, and to rebury existing collections from the previous data recovery effort. Following the completion of all ground disturbing activity and reburial of all materials and before the issuance of a Certificate of Occupancy, the Applicant shall: 1) ensure that native plants and natural barriers are installed (in consultation with TCA tribes) as part of

landscaping; 2) file a deed restriction on the parcel that protects the reburial location from future disturbance and provide a copy to the City. The exhibit for the deed restriction and purpose of it shall be kept confidential and out of the public record.

MM-TCR-11 Deed Restriction. Prior to the issuance of a Certificate of Occupancy, the Applicant shall record a deed restriction with the County of San Diego for the western cultural feature that restricts ground disturbing activities at that location. A copy of the recorded deed restriction shall be provided to the City as proof of compliance.

MM-TCR-12 Access Agreement. Prior to the issuance of a Certificate of Occupancy, the Applicant shall extend a written offer to each consulting tribe to enter into an access agreement, which is binding on successors and heirs to the property, that allows for legal access to visit the reburial location after construction is completed. If more than one tribe elects to enter into an access agreement, each tribe shall have its own agreement. In the event that one or more consulting tribe does not respond to the offer within 30 days of receipt, then the City will deem this mitigation measure satisfied provided that the offer was extended and documented in accordance with this measure.