



THE CITY OF SAN DIEGO

REPORT TO THE HEARING OFFICER

HEARING DATE: July 23, 2014 REPORT NO. HO 14-045

ATTENTION: Hearing Officer

SUBJECT: CITY HEIGHTS CANYON ENHANCEMENTS
PROJECT NUMBER 333312

LOCATION: City of San Diego property within Manzanita, Hollywood, Swan, and 47th
Street canyons in City Heights

APPLICANT: Eric Bowlby, San Diego Canyonlands, Inc.
<http://www.sdcanyonlands.org/>

SUMMARY

Issue(s): Should the Hearing Officer approve a project to improve and construct hiking trails, restore upland and wetland habitat, and provide on-going maintenance of hiking trail improvements within Manzanita, Hollywood, Swan, and 47th Street canyons within City Heights?

Staff Recommendation(s):

1. CERTIFY Mitigated Negative Declaration No. 333312 and ADOPT Mitigation Monitoring and Reporting Program; and
2. APPROVE Site Development Permit No. 1165429.

Community Planning Group Recommendation: On June 2, 2014, the City Heights Area Planning Committee voted 12-1-0 to recommend approval of the project with no additional conditions (Attachment 9).

Environmental Review: A Mitigated Negative Declaration No. 333312 has been prepared for the project in accordance with State of California Environmental Quality Act Guidelines. A Mitigation, Monitoring and Reporting Program has been prepared and will be implemented which will reduce, to a level below significance, any potential impacts identified in the environmental review process.

BACKGROUND

The City of San Diego Park and Recreation Department Open Space Division manages over 24,000 acres of open space, including open space canyons and parklands. Some 3,200 acres are citywide neighborhood canyons and parklands which are overseen by the Open Space Canyon Program staff. San Diego's canyons contain natural and cultural history unique to the region. For many communities these canyons are all that remain as undeveloped natural landscape. Canyons provide the citizens of San Diego with such benefits as scenic vistas, preservation of natural resources, outdoor recreation, and other benefits to health and well being. The Open Space Division Canyon Program supports various "Friends of Canyons" groups by assisting with environmental education, canyon enhancement planning, weed management, trail maintenance, and kiosk installation.

One such "Friends of Canyons" group is the San Diego Canyonlands (SDCL), a non-profit organization to promote, protect and restore the natural habitats in San Diego County's canyons and creeks by fostering education and ongoing community involvement in stewardship and advocacy, and by collaborating with other organizations. Consistent with the City of San Diego's 2008 General Plan which includes objectives that call for the protection and enhancement of San Diego's canyons, including linking them together into an open space system that is integrated into the fabric of the City's built environment, the SDCL established a Canyon Enhancement Planning (CEP) Program for canyon enhancements. In 2009, SDCL began implementing CEP Program in City Heights, an under-served and park-deficient community in central San Diego, and in May 2012 the California Strategic Growth Council awarded SDCL a \$365,000 "Urban Greening" Grant for trail enhancements and signage, and restoration of habitat in four City Heights canyons: Manzanita, Hollywood, Swan, and 47th Street.

The SDCL's proposed trail enhancements and habitat restoration within the four canyon areas would occur within City-owned parcel lots and public rights-of-way that contain environmentally sensitive lands and habitat. A Site Development Permit is required on premises containing environmentally sensitive lands.

DISCUSSION

Project Description:

The project site is located within the following four urban canyons: Manzanita, Hollywood, Swan, and 47th Street canyons in the City Heights neighborhood within the Mid-City Community Planning Area. The project would allow for canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) in the four urban canyons. Specifically, SDCL would conduct canyon restoration and enhancement activities within the public right-of-way and on City-owned Open Space Park Land to restore approximately 11.3 acres of upland habitat; restore and enhance 2.84 acres of wetlands habitat; improve and construct 3.96 miles of hiking trails; closure of approximately 4.8 miles of unmaintained pathways; and provide on-going maintenance of hiking trail improvements within the canyon areas. All four urban canyons are within OR-1-1

and/or OR-1-2 Zones and designated as Open Space. The Open Space designation is “intended for recreation areas or areas with severe environmental constraints.”

Restoration activities would include removal of debris, removal of non-native plant species, and planting of native species. All activities would follow City standards for restoration and bird nesting season restrictions. Additionally, SDCL staff, interns, and volunteers would selectively remove non-native plants within the project area using a variety of non-powered hand tools including gloves, shovels, hand snips, loppers, sheers, rakes, and saws. Chippers, weed whips, and/or other hand-held power tools would only be used outside of bird nesting season unless otherwise approved by the City of San Diego Park and Recreation Department’s Open Space Division and with appropriate surveys, distance, and use-interval protocols. The project also includes installation of native plants within the restoration areas using seeds or container stock and hand tools such as shovels, pick axes, and a powered auger, and upland and wetland habitat restoration.

The trail construction and enhancements would be constructed in areas that currently have existing foot paths and would connect to the existing sewer maintenance access roads which enter the canyons from various lateral access points and generally run along the bottom of each canyon area. The existing eight-foot wide sewer maintenance access roads are maintained by the Public Utilities Department (PUD) Wastewater Division. Routine maintenance currently occurs at least once a year by the PUD. Connecting trails would be built with switchbacks where possible to avoid the high maintenance requirements of stairways and would be built to minimize erosion, and shortcutting that would further degrade habitat areas. In these cases, the amount of impacted native vegetation would be minimal. New trails would be four feet wide and conform to the standards established by the City’s Multiple Species Conservation Program (MSCP), Multi-Habitat Planning Area (MHPA).

The SDCL has obtained a License Agreement with the City of San Diego to perform the above mentioned canyon restoration and trail improvements, and supplement the City’s maintenance of these trails for the 20-year project maintenance period (Attachment 10).

Environmental Analysis:

A Mitigated Negative Declaration (MND) No. 333312 has been prepared for the project in accordance with the State of California Environmental Quality Act (CEQA) Guidelines. The City of San Diego conducted an Initial Study which determined that the proposed project could have significant environmental affects to Land Use (MSCP/MHPA) and Biological Resources. Subsequent revisions in the project proposal create the specific mitigation identified in the MND and a Mitigation, Monitoring and Reporting Program has been prepared and will be implemented which will reduce, to a level below significance, any potential impacts identified in the environmental review process. The project, as revised, now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an Environmental Impact Report will not be required.

Conclusion:

City staff has reviewed the proposed project and all issues identified through the review process have been resolved in conformance with adopted City Council policies and regulations of the Land Development Code. Staff has provided the draft environmental resolution and Mitigation, Monitoring, and Reporting Program, draft findings to support approval of the proposed development, and draft conditions of approval. City staff is recommending the Hearing Officer approve the project.

ALTERNATIVES:

1. Approve Site Development Permit No. 1165429, with modifications.
2. Deny Site Development Permit No. 1165429, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,


Tim Daly, Development Project Manager

Attachments:

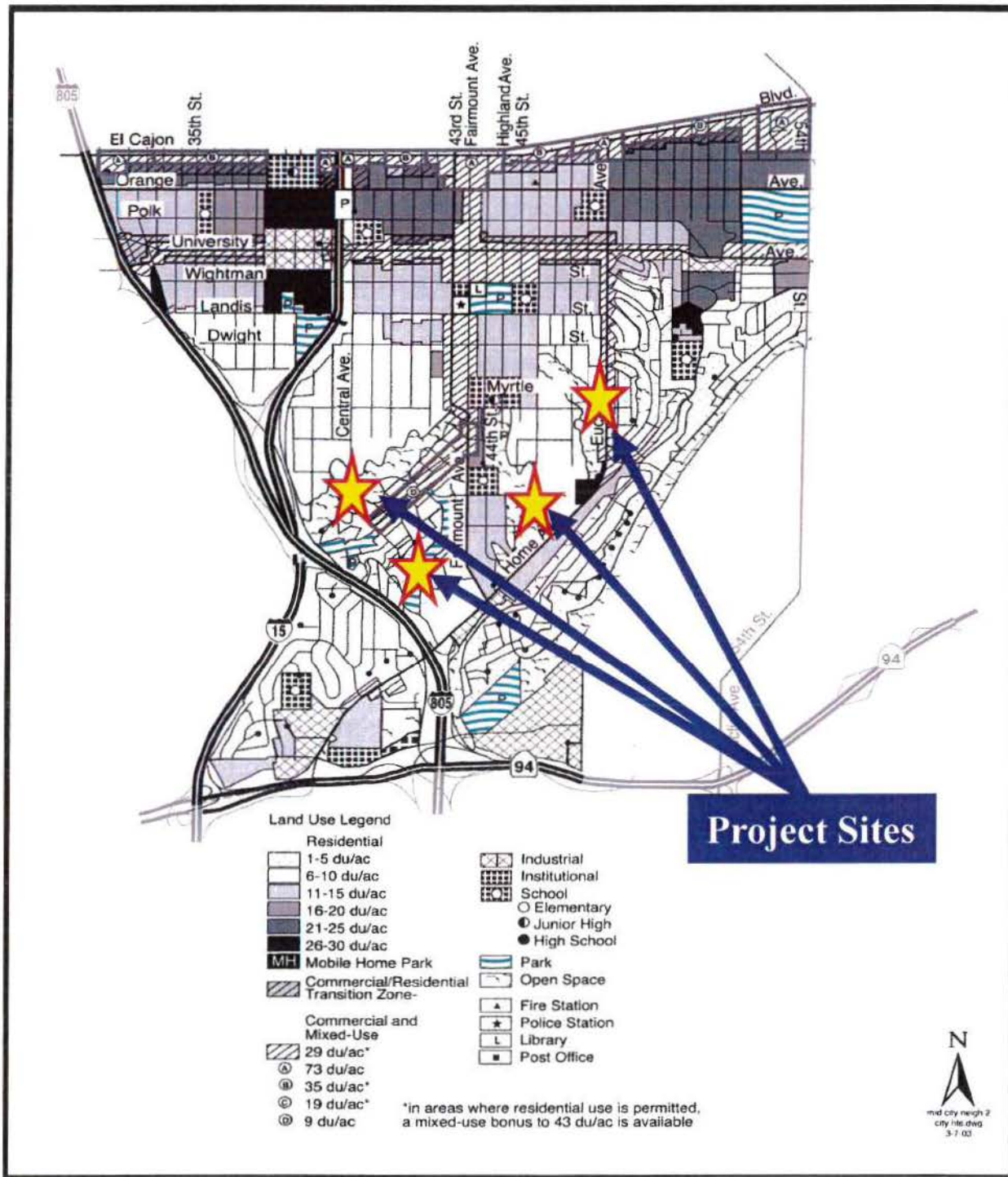
1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photographs
4. Draft Permit Resolution with Findings
5. Draft Permit with Conditions
6. Draft Environmental Resolution with MMRP
7. Project Plans (Separately to Hearing Officer)
8. Community Planning Group Recommendation
9. Ownership Disclosure Memorandum from City of San Diego Parks and Recreation Department, Aug, 8, 2013
10. City of San Diego License Agreement, Feb. 12, 2014
11. Project Chronology



Project Location

CITY HEIGHTS CANYON ENHANCEMENTS, Project No. 333312
City Heights Area

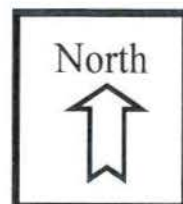


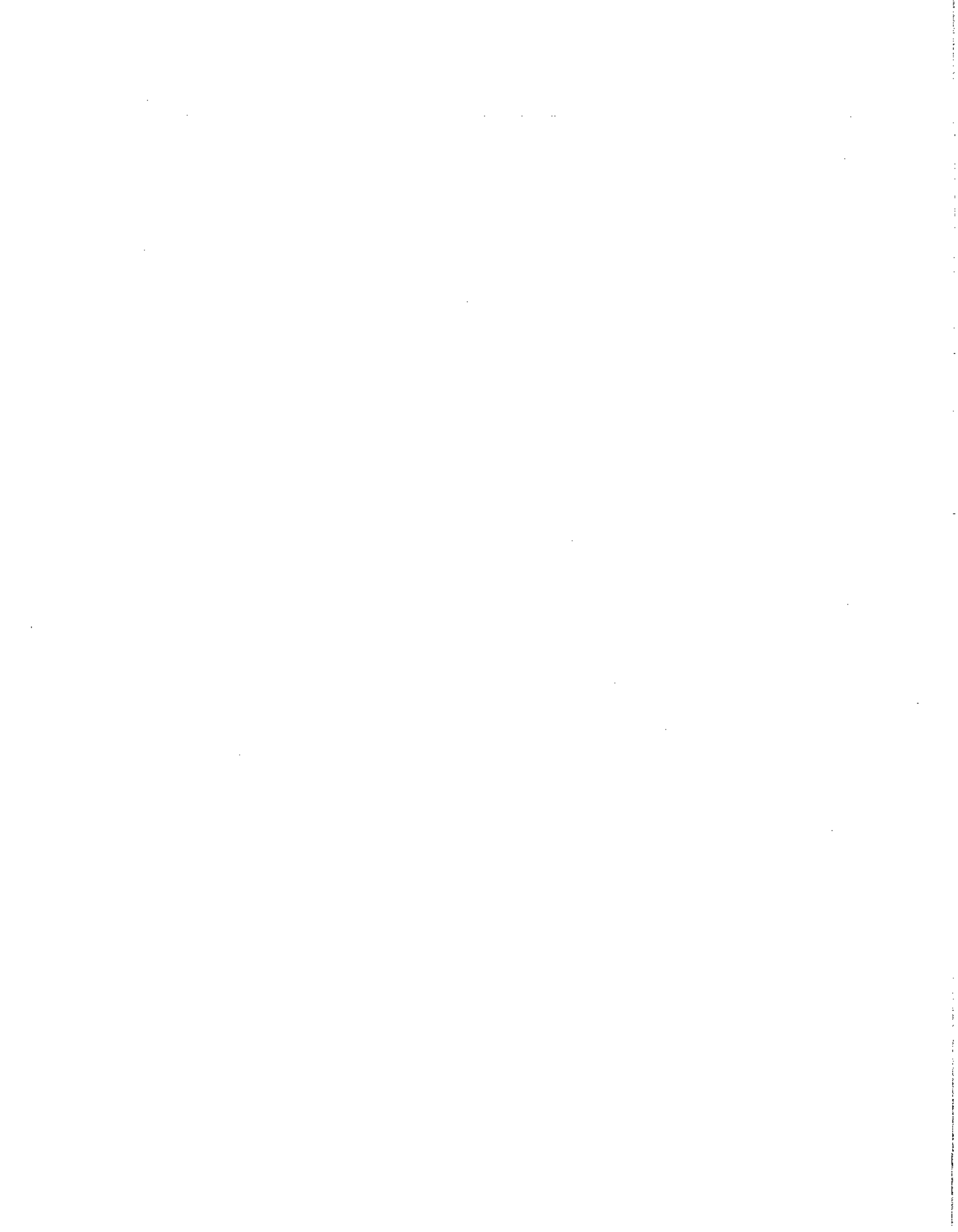


Mid-City City Heights Community Land Use Map



CITY HEIGHTS CANYON ENHANCEMENTS, Project No. 333312
City Heights Area





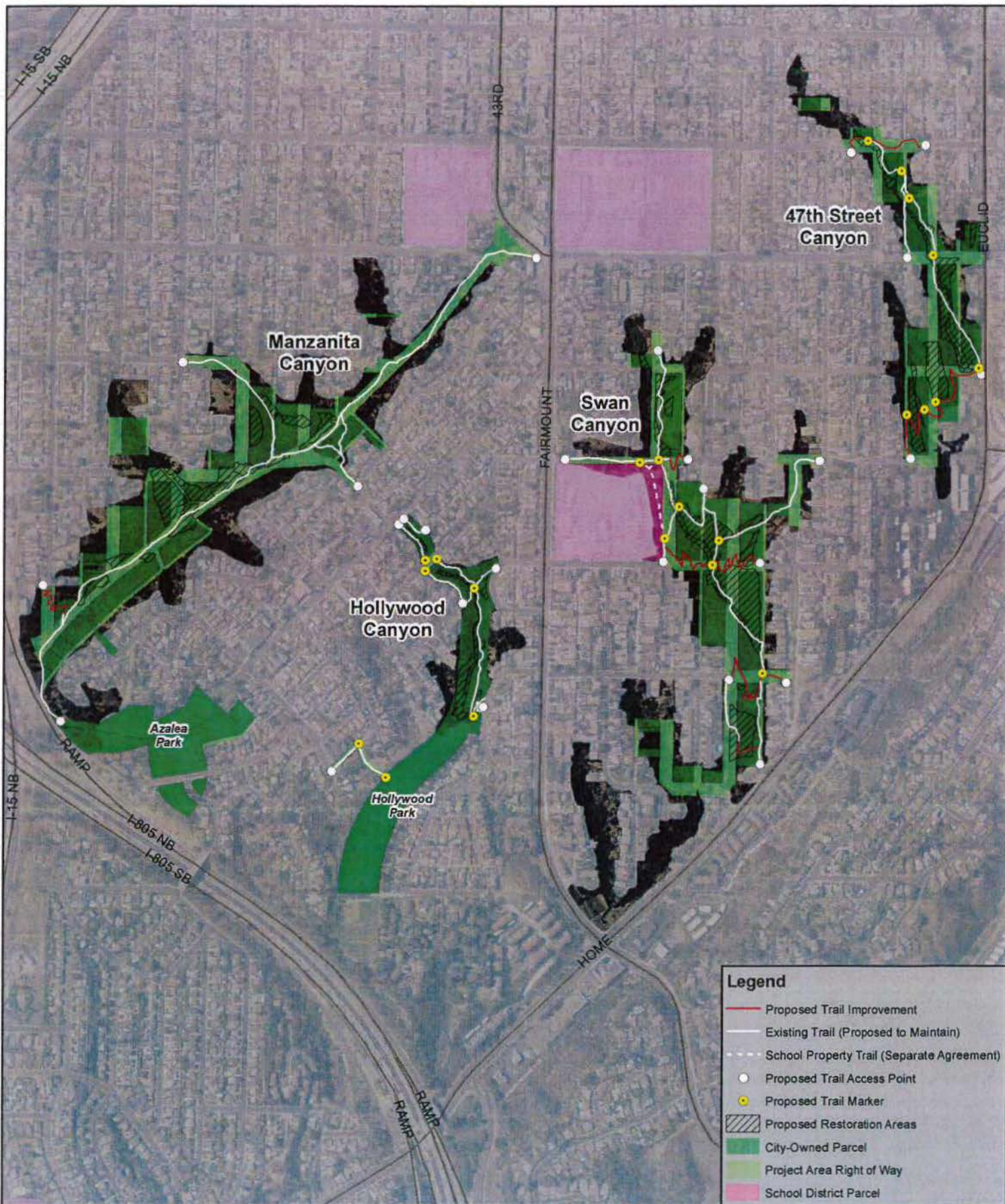
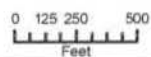


Exhibit A



Map Date: 05.22.2013
 Imagery Date: Fall 2008
 Data Sources: SANDAG/SanGIS, City of San Diego, San Diego Canyonlands
 Contact: Will Anderson | www.sdcanyonlands.org
 For More Info: www.sdcanyonlands.org/cep



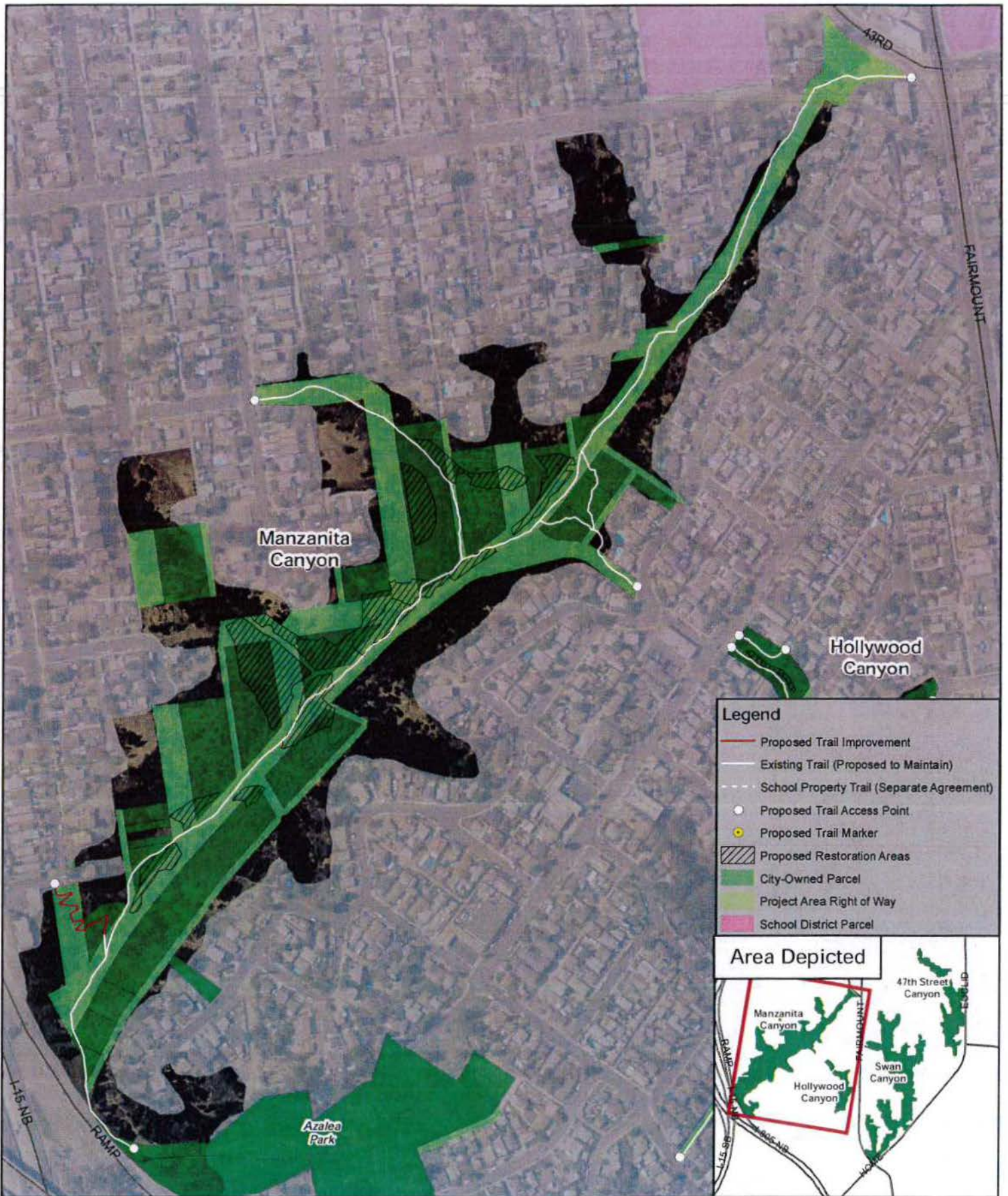
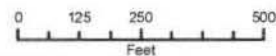


Exhibit (A-1) | Manzanita Canyon and Azalea Park



Map Date: 05.22.2013
 Imagery Date: Fall 2008
 Data Sources: SANDAG/SanGIS, City of San Diego, San Diego Canyonlands
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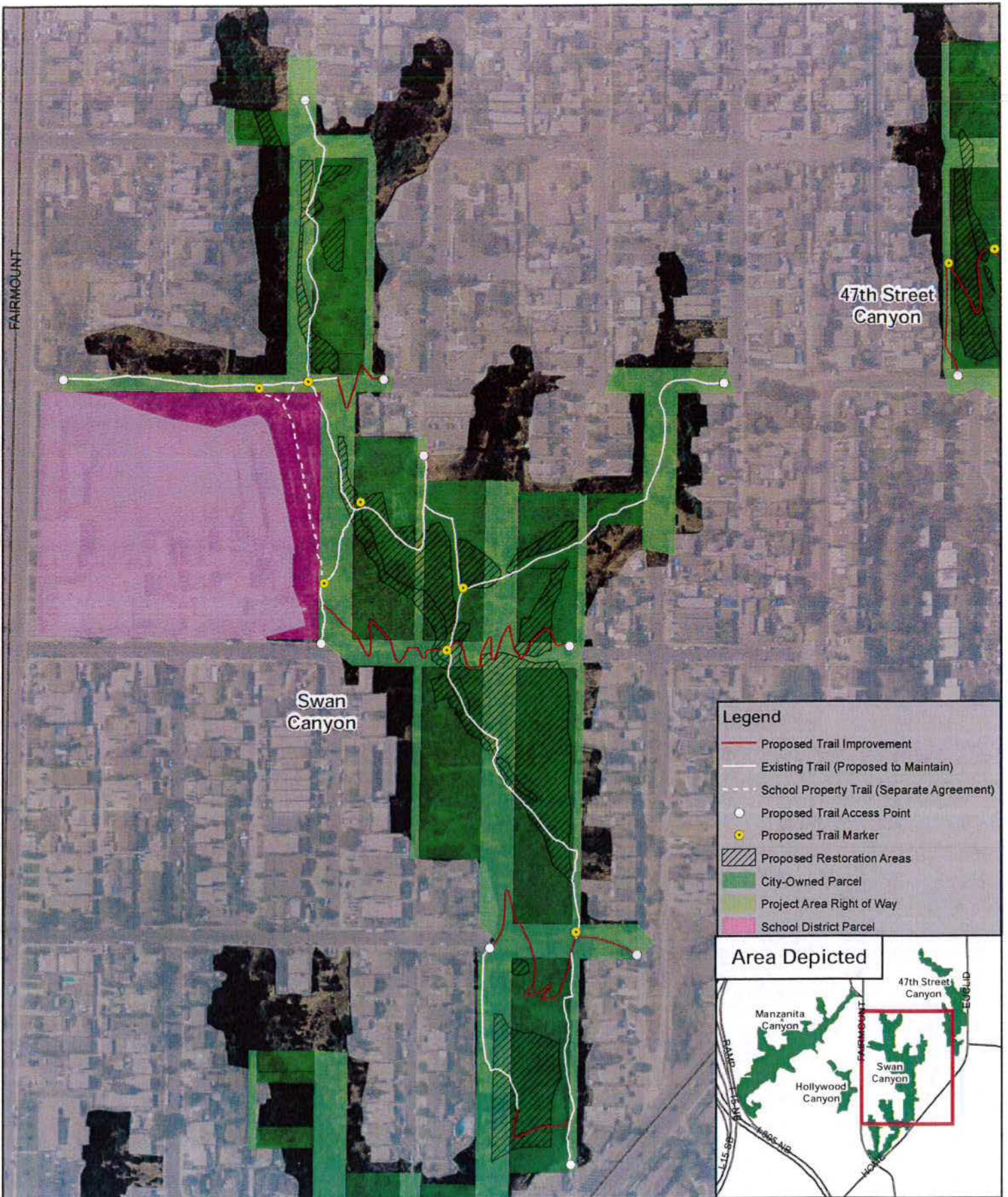


Exhibit (A-2) | Swan Canyon



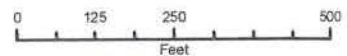
Map Date: 05.22.2013

Imagery Date: Fall 2008

Data Sources: SANDAG/SanGIS, City of San Diego, San Diego Canyonlands

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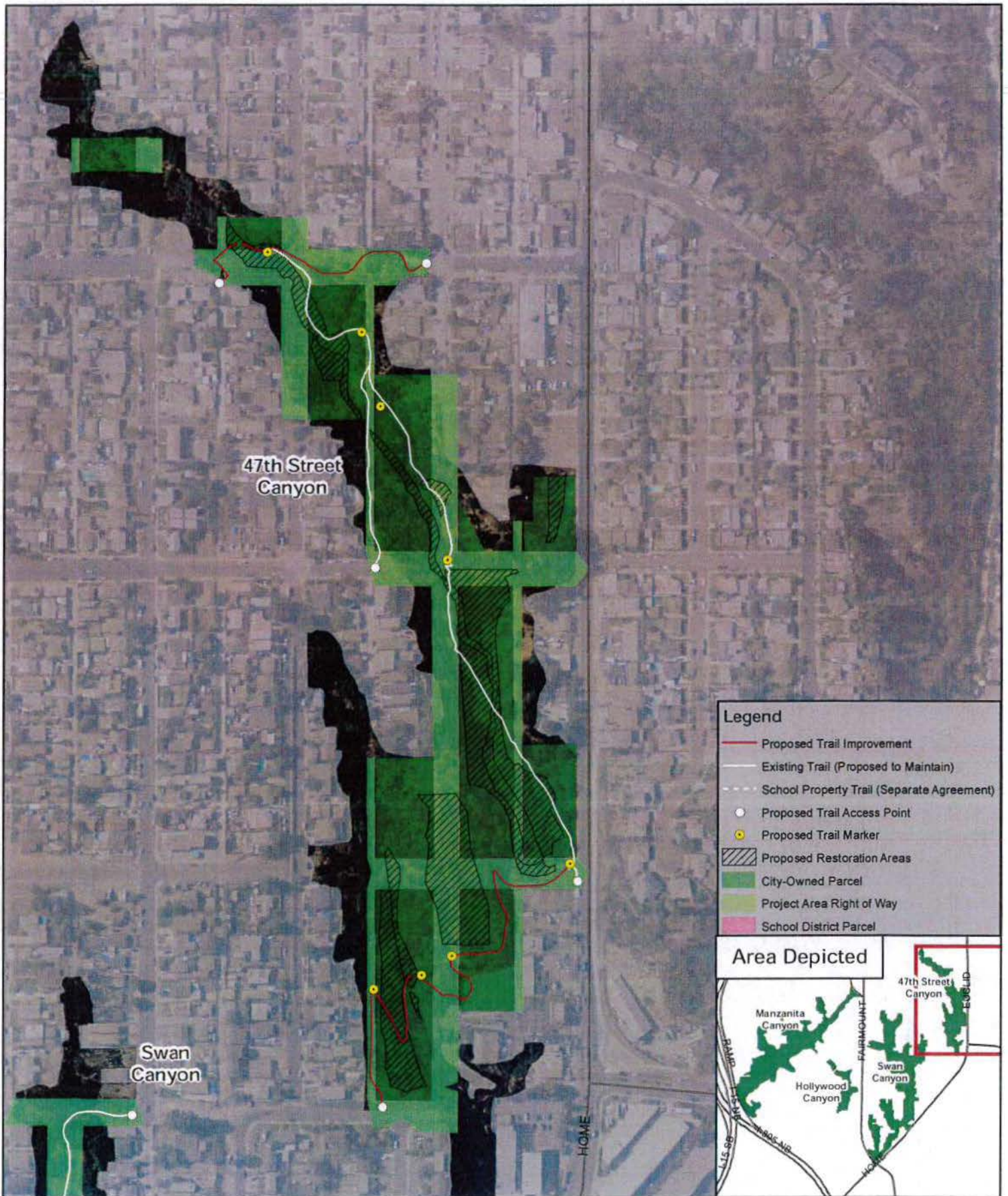


Exhibit (A-3) | 47th Street Canyon



Map Date: 05.22.2013
 Imagery Date: Fall 2008
 Data Sources: SANDAG/SanGIS, City of San Diego, San Diego Canyonlands
 Contact: Will Anderson | www.sdcanionlands.org
 For More Info: www.sdcanionlands.org/cep

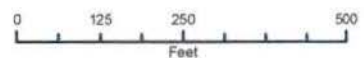
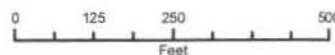




Exhibit (A-4) | Hollywood Canyon and Hollywood Park



Map Date: 05.22.2013
 Imagery Date: Fall 2008
 Data Sources: SANDAG/SanGIS, City of San Diego, San Diego Canyonlands
 Contact: Will Anderson | www.sdcanyonlands.org
 For More Info: www.sdcanyonlands.org/cep





HEARING OFFICER RESOLUTION NO. HO-XXXX
SITE DEVELOPMENT PERMIT NO. 1165429
CITY HEIGHTS CANYONS ENHANCEMENT PROJECT NO. 333312 [MMRP]

WHEREAS, SAN DIEGO CANYONLANDS, Incorporated, Permittee, filed an application with the City of San Diego for a permit to restore approximately 11.3 acres of upland habitat; restore and enhance 2.84 acres of wetlands habitat; improve and construct 3.96 miles of hiking trails; closure of approximately 4.8 miles of unmaintained pathways; and provide on-going maintenance of hiking trail improvements within Manzanita, Hollywood, Swan, and 47th Street Canyons (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1165429), on portions of a cumulative total of 53.8 acres;

WHEREAS, the project site is located within portions of fifty-three (53), City of San Diego owned properties in four urban canyon areas; Manzanita, Hollywood, Swan, and 47th Street Canyons in City Heights area of the Mid-City Community Plan;

WHEREAS, on July 23, 2014, the Hearing Officer of the City of San Diego considered Site Development Permit No. 1165429 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Hearing Officer of the City of San Diego as follows:

That the Hearing Officer adopts the following written Findings, dated July 23, 2014.

FINDINGS:

Site Development Permit - Section 126.0504

A. Findings for all Site Development Permits

1. **The proposed development will not adversely affect the applicable land use plan.**
The project proposes canyon habitat restoration/enhancement, trail development, rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

Consistent with the MCCP's Natural and Cultural Resources Element, Open Space, the project's areas are envisioned as an "integrated open space system of linked natural canyons..." As per the goals of the Land Form - Canyons and Creeks section, this project would develop a more permanent system of trails while eliminating numerous un-planned existing trails and restoring them with native vegetation. The project implementation would be consistent with the applicable MCCP's Open Space Design and Development Guidelines, which call for erosion control, trail maintenance, and enhancement of aesthetics and native flora. In addition, the project would help implement the two primary Trail goals of the MCCP by the restoration and maintenance of open space canyons and providing limited non-vehicular access to open space areas within the community.

Furthermore, the proposed project would aid the City's Urban Greening Plan efforts in City Heights by enhancing the open space system adjacent to the Plan's areas of focus, particularly in Swan Canyon and Manzanita Canyon.

Finally, the City of San Diego General Plan (2008) calls for implementing sustainable development practices, including providing pedestrian connections between neighborhoods and the planting of vegetation. The General Plan provides policy guidance to balance the needs of a growing City while enhancing quality of life for residents. The proposed project areas of work are designated as "Open Space" and conform to General Plan's Policy CE-B.1 in that the project would remove nonnative plants and plant native species. The proposed work would include reconstruction/relocation of trails to better serve the public need and reduce the potential for erosion on slopes, and revegetation of disturbed areas.

Therefore, proposed project complies with the community plan and will not adversely affect the applicable land use plan.

2. **The proposed development will not be detrimental to the public health, safety, and welfare.** The project proposes the canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

The project would not have any environmental effects that would cause substantial adverse effects on human beings. The improved trail system and aesthetic of the canyon would attract hiking, biking, and other types of recreation that improve public health and a cultural connection to the environment in a manner consistent with the City's General Plan and the MCCP.

The project is not growth inducing. As such, the project is considered consistent with the growth assumptions in the Regional Air Quality Strategy (RAQS) and would not conflict or obstruct the implementation of the Air Quality Management Plan or applicable portions of the State Implementation Plan. Furthermore, emissions would be less than the San Diego Air Pollution Control District (SDAPCD) thresholds for all pollutants.

The City owned canyon properties are under the management of the City of San Diego Park and Recreation Department, Open Space Division which maintains designated Brush Management Zones for purposes of fire prevention. No upland planting of native species is proposed within those zones with the exception of planting for trail stabilization purposes. All work would comply with the adopted policy in accordance with the Land Development Code Landscape Regulations for Brush Management and will be pre-approved by the City Open Space Division. As such, the project would not expose people or structures to a significant risk of loss, injury, or death involving wildland fires.

The proposed restoration and trails project would not include any transport, use, emissions or disposal of hazardous materials, and therefore would not create a significant hazard to the public or the environment. Pesticide/herbicide use would be minimized on the project

and conducted by a certified applicator. Herbicides, if needed, would be selected based upon both their effectiveness and safety to human health. A review of records maintained by the Department of Toxic Substance Control (DTSC) performed in May 2013 shows that project is not located on or adjacent to a site that is included on a list of hazardous materials sites.

The permit prepared for this project includes various conditions and exhibits of approval relevant to achieving compliance with the regulations of the Land Development Code in effect for the project site; and that such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety, and general welfare of the persons residing or working in the area. These conditions include standards which pertain to grading and landscaping. Furthermore, the City's Environmental Analysis Section has reviewed the proposed development and has determined that the proposed project could have possible adverse effects on biological resources and land use adjacency. However, the subsequent project features and revisions create the specific mitigation that is included in the project's Mitigated Negative Declaration No. 333312, Mitigation, Monitoring and Reporting Program (MMRP). With the MMRP, the project impacts with this development would be below the level of significance and will not be detrimental to the public health, safety, and welfare.

3. **The proposed development will comply with the applicable regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code.** The project proposes the canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

This project complies with the development regulations of the OR-1-1 and OR-1-2 Overlay Zones, Environmentally Sensitive Lands Regulations, and the MCCP. This project is located within the City of San Diego Multiple Species Conservation Program's (MSCP) Multi-Habitat Planning Area (MHPA). Project's canyon habitat restoration/enhancement and trail development will not adversely affect the MHPA. With the adoption of the permit conditions, the proposed canyon habitat restoration/enhancement and trail development will be in conformance with all relevant regulations including grading activities. No deviations or variances are proposed for the project. Therefore, the proposed development complies with the applicable regulations of the San Diego Municipal Code/Land Development Code.

B. Supplemental Findings--Environmentally Sensitive Lands

1. **The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.** The project proposes the canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open

Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

The proposed uses are consistent with current zoning and designated uses of the land. Restoration, revegetation and trails development will be consistent with the City Land Development Code, Environmentally Sensitive Lands Regulations, Biological Guidelines and the City's Multiple Species Conservation Plan. To minimize impacts to sensitive lands, the project proposes safe, established, and sustainable trails where unapproved, eroding, social trail patterns already exist. In addition, the project would address existing eroded areas and close off existing trails that are inappropriately located, thus reducing fragmentation of sensitive habitat areas. Impacts to sensitive vegetation communities and covered species, both inside and outside the MHPA, are not expected to be significant as most of the proposed trail alignments are in areas of impacted habitats and non-native plant species. Revegetation components of the project, including wetlands, are consistent with and support the goals of the Multiple Species Conservation Plan and are not expected to result in significant impacts to sensitive habitats or wildlife. Overall, the project would improve the appearance of the four canyons and would not have a substantial adverse effect on a scenic vista but would contribute to an overall improvement to scenic resources.

The permit prepared for this project includes various conditions and exhibits of approval relevant to achieving compliance with the regulations of the Land Development Code in effect for the project site; and that such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the environmentally sensitive lands. Furthermore, the City's Environmental Analysis Section has reviewed the proposed development and has determined that the project would not have a significant impact on the environment and therefore prepared Mitigated Negative Declaration No. 333312 with specific mitigation as identified in Section V, Mitigation, Monitoring and Reporting Program. Therefore, with implementation of the permit conditions and mitigation measures, the project site is physically suitable for the design and siting of the trail improvements and restoration areas will result in the minimum disturbance to environmentally sensitive lands.

2. **The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.** The project proposes the canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

The City of San Diego's Seismic Safety Map does not indicate the presence of a known earthquake fault mapped within the project area. Therefore, no impact would occur from a known earthquake fault.

By improving upland vegetation cover on the canyon slopes, closing unnecessary social trails, re-vegetating eroded areas, and formalizing the trail systems, the project would provide additional vegetative cover for exposed areas to prevent erosion and actually

reduce the likelihood of landslides in the canyons. Trail switchbacks have been designed to minimize erosion and are not expected to compromise slope stability. Therefore, the project would not expose people to landslides.

The project would not be located on an expansive soil type. Utilization of appropriate engineering design measures and standard construction practices, to be verified at the construction permit stage, would ensure that the potential for impacts from geologic hazards would be less than significant. Therefore, no impacts related to unstable soils are identified.

Proposed revegetation of the project areas would reduce the potential for erosion while preserving the existing drainage pattern. There would be no trail construction in existing streams or rivers. Because of this, the project would not substantially alter the existing drainage pattern of the site or area. Impacts would be less than significant. The project would not result in an increase in impervious surface or storm water volume, frequency or velocity at any of the basin outfalls, nor would it significantly reduce existing infiltration rates. Runoff volume from the project would be the same or reduced as compared to the existing condition.

The project does not propose to place any structures in a 100-year flood hazard area. Therefore, the project would not impede or redirect flood flows or result in on- or off-site impacts on upstream or downstream properties. The project would not result in the exposure of people or structures to floods as a result of a levee or dam. The project site is not downstream from either a levee or dam. As such, no impact would occur. The proposed project would therefore have no impact.

Therefore, the proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

3. **The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.** The project proposes the canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

One primary purpose of the project is to improve the quality of habitats in environmentally sensitive lands by restoring/enhancing approximately 14 acres of habitat and reducing fragmentation of habitat by closing unauthorized hiking trails and providing safe, convenient, and well defined hiking trails. The hiking trail design will utilize existing use patterns and will avoid sensitive vegetation to the extent that it's practical.

The permit prepared for this project includes various conditions and exhibits of approval relevant to achieving compliance with the regulations of the Land Development Code in effect for the project site; and that such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the environmentally sensitive lands.

Furthermore, the City's Environmental Analysis Section has reviewed the proposed development and has determined that the project would not have a significant impact on the environment and therefore prepared Mitigated Negative Declaration No. 333312 with specific mitigation as identified in Section V, Mitigation, Monitoring and Reporting Program. Therefore, with implementation of the permit conditions and mitigation measures, the project is sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

4. **The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.** The project proposes the canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

The project would be consistent with the goals, policies and objectives of the Multiple Species Conservation Program (MSCP) Subarea Plan and would not significantly impact Sensitive Biological Resources within or outside of the Multiple Habitat Planning Area (MHPA) as defined in the Land Development Code (LDC). Impacts to the MHPA would be minimized and mitigated according to the City's Biological Guidelines. The project impacts and mitigation would include the following:

- 0.17-acre impacts to southern maritime chaparral and 0.21-acre of scrub oak chaparral outside the MHPA mitigated at a 1:1 ratio via restoration of like habitat;
- 0.27-acre impacts to Diegan coastal sage scrub outside the MHPA mitigated at a ratio of 1:1;
- 0.17-acre impacts to coastal sage-chaparral transition (0.03 acre inside the MHPA mitigated at a 2:1 ratio and 0.14-acre inside the MHPA mitigated at a ratio of 1:1);
- 0.27-acre impacts to southern mixed chaparral (0.03-acre inside the MHPA mitigated at a ratio of 1:1 and 0.24-acre outside the MHPA mitigated at a ratio of 0.5:1); and
- 0.13-acre impacts to non-native grassland outside the MHPA mitigated at a ratio of 0.5:1 with 0.065 acres of habitat restoration of Tier I or II habitat or better.

The total impacts to upland habitat of 1.22 acres shall be mitigated through a combination of the restoration of 1.07 acres of upland habitat and revegetation of 13.05 acres of wetland and upland habitats, inside and outside of the City's MHPA.

To avoid indirect impacts to the adjacent MHPA, the project would adhere to the MHPA Land Use Adjacency Guidelines. Some of the proposed trail improvements in Manzanita Canyon lie within the MHPA. Trails are an allowed use within the MHPA and trails will be built to a maximum of four feet wide according to MHPA guidelines. Trails will be designed to minimize erosion and short cutting. Additional revegetation work and trail enhancements are expected to improve existing marginal sensitive species habitat. The proposed project would enhance local native flora in effect improving the wildlife habitat values in the canyons by planting native species.

Therefore, the project as designed and conditioned by the permit, including mitigation requirements, will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.

5. **The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.** The project proposes the canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

The proposed project is located approximately 6 miles east from the nearest beach shoreline area and will not contribute to the erosion of public beaches or impact local shoreline sand supply.

6. **The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.** The project proposes the canyon habitat restoration/enhancement and trail development and rehabilitation, amenity planning, and installation (including trail kiosks and way-finding signage) within the public right-of-way and on City-owned Open Space park lands on four urban canyons: Manzanita, Hollywood, Swan, and 47th Street Canyons, all within the City Heights area of the Mid-City Community Plan (MCCP).

Mitigation measures have been identified and incorporated into permit conditions to ensure adherence to design features shown on Exhibit "A" and the technical study recommendations used in preparing a Mitigated Negative Declaration No. 333312 and Mitigation, Monitoring, and Reporting Program (MMRP) for the project. The MMRP measures for the project include adherence to requirements for compliance with the City's Multi-Species Conservation Program (MSCP) Land Use Adjacency Guidelines for the Multi-Habitat Planning Area (MHPA) and onsite biological monitor during grading. These measures are reasonably related to, and calculated to alleviate, potential project impacts to MSCP/MHPA land use adjacency and biological resources created by the development.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Hearing Officer, Site Development Permit No. 1165429 is hereby GRANTED by the Hearing Officer to the referenced Permittee, in the form, exhibits, terms and conditions as set forth in Site Development Permit No. 1165429, a copy of which is attached hereto and made a part hereof.

Tim Daly
Development Project Manager
Development Services

Adopted on: July 23, 2014

Job Order No. 24003973

DRAFT

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24003973

SITE DEVELOPMENT PERMIT NO. 1165429
CITY HEIGHTS CANYONS ENHANCEMENT PROJECT NO. 333312 [MMRP]
Hearing Officer

This Site Development Permit No. 1165429 is granted by the Hearing Officer of the City of San Diego to San Diego Canyonlands, Incorporated, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0504. The cumulative total 53.8-acre site is located within a total of fifty-three (53), City of San Diego owned properties in four urban canyons; Manzanita, Hollywood, Swan, and 47th Street canyons, in the OR-1-1 and OR-1-2 Overlay Zones of the City Heights area of the Mid-City Communities Plan.

Subject to the terms and conditions set forth in this Permit, permission is granted to the Permittee for the restoration and enhancement of upland plant habitat, wetlands habitat, and hiking trail improvements described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 23, 2014, on file in the Development Services Department.

The project shall include:

- a. Within Manzanita, Hollywood, Swan, and 47th Street Canyons; restore approximately a total of 11.3 acres of upland habitat; restore and enhance 2.84 acres of wetlands habitat; improve and construct 3.96 miles of hiking trails; closure of approximately 4.8 miles of unmaintained pathways; and provide on-going maintenance of hiking trail improvements; and
- b. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning

regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by August 6, 2017.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the federal Endangered Species Act [ESA] and by the California Department of Fish and Wildlife [CDFW] pursuant to California Fish and Wildlife Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to

utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFW, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, in accordance with Section 17.1D of the IA.

8. The Owner/Permittee shall secure all necessary construction permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including

without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

13. The mitigation measures specified in the MMRP and outlined in Mitigated Negative Declaration No. 333312, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 333312, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

- Land Use (MSCP/MHPA); and
- Biological Resources

15. If burn ash is discovered during project construction activities, the Owner/Permittee shall immediately notify The City of San Diego Solid Waste Local Enforcement Agency (LEA) at (619) 533-3688.

ENGINEERING REQUIREMENTS:

16. The project proposes to export no material from the project site. Any excavated material that is exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2009 edition and Regional Supplement Amendments adopted by Regional Standards Committee.

17. The drainage system proposed for this development, as shown on the site plan, is public and subject to approval by the City Engineer.

18. Prior to the issuance of any construction permits, the Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to the requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

19. Prior to the issuance of any construction permit, the Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2,

Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 2009-0009 DWQ and the San Diego Regional Water Quality Control Board (SDRWQCB) Order No. R9-2007-001, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.

A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 2009-0009-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 2009-0009-DWQ.

LANDSCAPE REQUIREMENTS:

20. Prior to issuance of any construction permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and Regulations and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A," on file in the Office of the Development Services Department.
21. All required landscape shall be maintained in a disease, weed and litter free condition consistent with the landscape standards at all times.
22. The Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the right-of-way, consistent with the Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity.
23. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage.
24. The Permittee shall implement a Brush Management Program within the limits of the area of work, including revegetation/restoration areas, and as shown on Exhibit "A" on file in the Office of the Development Services Department and consistent with the Landscape Regulations, SDMC sec. 142.0412.

25. The Brush Management Program shall consist of a standard Zone One of 35 feet in width with Zone Two of 65 feet in width extending out from the project's structures towards the native/naturalized vegetation. A variation of widths is allowed if consistent with the Brush Management Regulations of the SDMC sec. 142.0412.

26. Prior to issuance of any construction permit for grading, landscape construction documents shall be submitted showing the detailed brush management zones on the property in substantial conformance with Exhibit "A" and consistent with the Brush Management Regulations of the Land Development Code.

27. The Brush Management Program shall be maintained within the limits of the area of work, including revegetation/restoration areas, and as shown on Exhibit "A," by the Permittee at all times in accordance with the City of San Diego's Landscape Standards.

PLANNING/DESIGN REQUIREMENTS:

28. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

29. All trail improvements, including amenities, must comply with regulations and standards set forth by Title 24, 2010 Americans with Disabilities Act (ADA).

30. Prior to issuance of any construction permit, all trail improvements, including amenities, must be reviewed and approved by the City of San Diego Parks & Recreation Department.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within 90 days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Hearing Officer of the City of San Diego on July 23, 2014 and Resolution No. HO-XXXX.

Permit Type/PTS Approval No.: SDP No. 1165429
Date of Approval: July 23, 2014

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Tim Daly
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

San Diego Canyonlands, Inc.
Owner/Permittee

By _____
NAME:
TITLE:

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

RESOLUTION NUMBER HO-XXXX

ADOPTED ON July 23, 2014

WHEREAS, on July 31, 2013, Eric Bowlby representing San Diego Canyonlands submitted an application to Development Services Department for a Site Development Permit for the City Heights Canyons Enhancements and Trails Project (Project); and

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

WHEREAS, the issue was heard by the Hearing Officer on July 23, 2014; and

WHEREAS, the Hearing Officer considered the issues discussed in Mitigation Negative Declaration No. 333312 (Declaration) prepared for this Project; NOW THEREFORE,

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

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

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

BE IT FURTHER RESOLVED, that the Declaration and other documents constituting the record of proceedings upon which the approval is based are available to the public at the office of the DEVELOPMENT SERVICES DEPARTMENT, 1222 FIRST AVENUE, SAN DIEGO, CA 92101.

BE IT FURTHER RESOLVED, that DEVELOPMENT SERVICES STAFF 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.

By: _____
Tim Daly, Development Project Manager

ATTACHMENT(S): Exhibit A, Mitigation Monitoring and Reporting Program

EXHIBIT A**MITIGATION MONITORING AND REPORTING PROGRAM****CITY HEIGHTS CANYONS ENHANCEMENTS AND TRAIL PROJECT****SITE DEVELOPMENT PERMIT No. 1165429****PROJECT NO. 333312**

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA, 92101. All mitigation measures contained in the Mitigated Negative Declaration No. 333312 shall be made conditions of **SITE DEVELOPMENT PERMIT No. 1165429** as may be further described below.

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

1. Prior to the issuance of a Notice To Proceed (NTP) for a subdivision, or any construction permits, such as Demolition, Grading or Building, or beginning any construction related activity on-site, the Development Services Department (DSD) Director's Environmental Designee (ED) shall review and approve all Construction Documents (CD), (plans, specification, details, etc.) to ensure the MMRP requirements are incorporated into the design.
2. In addition, the ED shall verify that the MMRP Conditions/Notes that apply ONLY to the construction phases of this project are included VERBATIM, under the heading, "ENVIRONMENTAL/MITIGATION REQUIREMENTS."
3. These notes must be shown within the first three (3) sheets of the construction documents in the format specified for engineering construction document templates as shown on the City website:
<http://www.sandiego.gov/development-services/industry/standtemp.shtml>
4. The **TITLE INDEX SHEET** must also show on which pages the "Environmental/Mitigation Requirements" notes are provided.
5. **SURETY AND COST RECOVERY** – The Development Services Director or City Manager may require appropriate surety instruments or bonds from private Permit Holders to ensure the long term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

B. GENERAL REQUIREMENTS – PART II

Post Plan Check (After permit issuance/Prior to start of construction)

1. PRE CONSTRUCTION MEETING IS REQUIRED TEN (10) WORKING DAYS PRIOR TO BEGINNING ANY WORK ON THIS PROJECT. The PERMIT HOLDER/OWNER is responsible to arrange and perform this meeting by contacting the CITY RESIDENT ENGINEER (RE) of the Field Engineering Division and City staff from MITIGATION MONITORING COORDINATION (MMC). Attendees must also include the Permit holder's Representative(s), Job Site Superintendent and the following consultants:

Project Biologist/Monitor, Revegetation/Restoration Specialist

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) #333312 and /or Environmental Document # 333312, 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.

Not Applicable for this project

4. MONITORING EXHIBITS

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

NOTE:

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

5. OTHER SUBMITTALS AND INSPECTIONS:

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

Document Submittal/Inspection Checklist

<i>Issue Area</i>	<i>Document submittal</i>	<i>Associated Inspection/Approvals/Note</i>
General	Consultant Qualification Letters	Prior to Pre-construction meeting
General	Consultant Const. Monitoring	Prior to or at Pre-Construction mtg
Biology	Biology Reports	Limit of Work Verification
Biology	Biology Reports	Final Report

C. SPECIFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS

LAND USE (MSCP/MHPA, ESL REGULATIONS)

LU-1: MHPA Land Use Adjacency Guidelines

The following mitigation associated with the MHPA Land Use Adjacency Guidelines of the MSCP applies specifically to Manzanita Canyon which is partially within the MHPA. The project biologist for each activity identified in this environmental document for Manzanita Canyon shall be responsible for implementing the appropriate requirements measures necessary to reduce potential direct and/or indirect impacts on the MHPA to below a level of significance.

Specific requirements shall include:

- I. Prior to issuance of any construction permit or notice to proceed, DSD/ LDR, and/or MSCP staff shall verify the Applicant has accurately represented the project's design in or on the Construction Documents (CD's/CD's consist of Construction Plan Sets for Private Projects and Contract Specifications for Public Projects) are in conformance with the associated discretionary permit conditions and Exhibit "A", and also the City's Multi-Species Conservation Program (MSCP) Multi-Habitat Planning Area (MHPA) Land Use Adjacency Guidelines. The applicant shall provide an implementing plan and include references on/in CD's of the following:
- A. Grading/Land Development/MHPA Boundaries - MHPA boundaries on-site and adjacent properties shall be delineated on the CDs. DSD 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, 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 by-products 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 CD's 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 LDC Section 142.0740.
 - 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 Brush Management Zone 1 area on the building pad outside of the MHPA. Zone 2 may be located within the MHPA provided the Zone 2 management will be the responsibility of an HOA or other private entity except where narrow wildlife corridors require it to be located outside of the MHPA. Brush management zones will 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-August 15 except where the City ADD/MMC has documented the thinning would be consistent with the City's MSCP Subarea Plan. Existing and approved projects are subject to current requirements of Municipal Code Section 142.0412.
- H. Noise - Due to the site's location adjacent to or within the MHPA where the Qualified Biologist has identified potential nesting habitat for listed avian species, construction noise that exceeds the maximum levels allowed shall be avoided during the breeding seasons for the following: California Gnatcatcher (3/1-8/15. If construction is proposed during the breeding season for the species, U.S. Fish and Wildlife Service protocol surveys shall be required in order to determine species presence/absence. If protocol surveys are not conducted in suitable habitat during the breeding season for the aforementioned listed species, presence shall be assumed with implementation of noise attenuation and biological monitoring.

Mitigation for Short-term Impacts to Sensitive Species from Project Construction

Specific to Manzanita Canyon, although no California Gnatcatchers were identified during field surveys, if any construction must be conducted during the breeding season, the following measures shall be implemented:

California gnatcatcher (STATE ENDANGERED/FEDERALLY ENDANGERED)

No clearing, grubbing, grading, or other construction activities shall occur between *March 1st and August 15th*, the breeding season of the California Gnatcatcher, until the following requirements have been met to the satisfaction of the ADD/Environmental Designer:

- A. A qualified biologist (possessing a valid Endangered Species Act Section 10(a)(1)(a) recovery permit) shall survey those wetland areas that would be subject to construction noise levels exceeding 60 decibels [db(a)] hourly average for the presence of the California gnatcatcher. Surveys for this species shall be conducted pursuant to the

protocol survey guidelines established by the U.S. Fish and Wildlife Service within the breeding season prior to the commencement of construction. If the California Gnatcatcher is present, then the following conditions must be met:

1. Between March 1 and August 15, no clearing, grubbing, or grading of occupied California gnatcatcher habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; and
 2. 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 California Gnatcatcher or habitat. An analysis showing that noise generated by construction activities would not exceed 60 db(a) hourly average at the edge of occupied habitat must be completed by a qualified acoustician (possessing current noise engineer license or registration with monitoring noise level experience with listed animal species) and approved by the city manager at least two weeks prior to the commencement of construction activities. Prior to the commencement of any of construction activities during the breeding season, areas restricted from such activities shall be staked, fenced or flagged under the supervision of a qualified biologist; or
 3. 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 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 to be inadequate by the qualified acoustician or biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season (September 16).
- * Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 db(a) hourly average or to the ambient noise level if it already exceeds 60 db(a) hourly average. If not, other measures shall be implemented in consultation with the biologist and the add/environmental designee, as necessary, to reduce noise levels to below 60 db(a) hourly average or to the ambient noise level if it already exceeds 60 db(a) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

- B. If California gnatcatchers are not detected during the protocol survey, the qualified biologist shall submit substantial evidence to the ADD/Environmental Designee and applicable resource agencies which demonstrates whether or not mitigation measures such as noise walls are necessary between March 1st and August 15th as follows:
1. If this evidence indicates the potential is high for California gnatcatcher to be present based on historical records or site conditions, then condition A. III., shall be adhered to as specified above.
 2. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

BIOLOGICAL RESOURCES

Mitigation is required for impacts that are considered significant under the City of San Diego's Biology Guidelines (2012) and the City of San Diego's CEQA Significance Determination Thresholds (2011) in accordance with the *City Heights Canyons and Trails Project Biological Technical Report (RECON April 2014)* as further described below:

MITIGATION FOR IMPACTS TO SENSITIVE UPLAND AND WETLAND HABITATS

BIO-1:

I. Entitlements Plan Check

- a. Prior to Permit Issuance and/or the Notice to Proceed (which will be sent to DSD), the ADD Environmental Designee of the Development Services Department shall verify that the following condition has occurred to mitigate direct impacts to 0.17 acre of southern maritime chaparral and 0.21 acre of scrub oak chaparral outside the MHPA at a 1:1 ratio via restoration; 0.27 acre of Diegan coastal sage scrub outside the MHPA at a ratio of 1:1; 0.17 acre of coastal sage-chaparral transition (0.03 acre inside the MHPA at a 2:1 ratio and 0.14 acre inside the MHPA at a ratio of 1:1); 0.27 acre of southern mixed chaparral (0.03 acre inside the MHPA at a ratio of 1:1 and 0.24 acre outside the MHPA at a ratio of 0.5:1), and 0.13 acre of non-native grassland outside the MHPA at a ratio of 0.5:1. Total impacts to upland habitat of 1.22 acres shall be mitigated through a combination of restoration (1.07 acres of upland habitat) and 13.05 acres of revegetation (wetland and upland habitats) inside and outside of the City's MHPA. The project includes translocation of three individuals of wart-stemmed ceanothus (*Ceanothus verrucosus*) in accordance with the approved *City Heights Canyons and Trails Project Biological Technical Report (RECON April 2014)*.
 1. Mitigation Goal: The project shall mitigate for impacts to upland habitat of 1.22 acres through of restoration of 1.07 acres of upland habitat within the MHPA. The project also includes revegetation of 13.05 acres of wetland and upland habitats inside and outside of the City's MHPA in accordance with the **conceptual *City Heights Canyons and Trails Project Programmatic Revegetation and Restoration Plan (RECON April 2014)***. Specifically, the Plan proposes revegetation of 4.17 acre of upland habitat within the MHPA and 6.03 acres outside the MHPA, 0.37 acres of wetland habitat within the

MHPA and 2.48 acres outside the MHPA. In addition, the restoration effort shall include the translocation of three individuals of wart-stemmed ceanothus (*Ceanothus verrucosus*). **Note: The revegetation and restoration provided by the conceptual City Heights Canyons and Trails Project Programmatic Revegetation and Restoration Plan (RECON April 2014) exceeds the mitigation requirement and is not intended to be used for future mitigation credits.**

2. Responsibilities: The Contractor shall be responsible for all grading and contouring, clearing and grubbing, installation of plant materials and native seed mixes, and any necessary maintenance activities or remedial actions required during installation and the 120-day plant establishment period as detailed in the Mitigation Plan. Standard Best Management Practices shall be implemented to insure that sensitive biological resources would not be impacted by water run-off.
3. Biological Monitoring Requirements: All biological monitoring in or adjacent to wetlands shall be conducted by a qualified wetland biologist. The biologist shall conduct construction monitoring during all phases of the project. Orange flagging shall be used to protect sensitive habitat. Construction related activity shall be limited to the construction corridor areas as identified on the construction plans. Both a detailed Performance Criteria plan and all the maintenance requirements are found in the Offsite Mitigation Plan.
4. Notification of Completion: At the end of the fifth year, a final report shall be submitted to Mitigation Monitoring Coordination section evaluating the success of the mitigation. The report shall make a determination of whether the requirements of the mitigation plan have been achieved. If the final report indicates that the mitigation has been in part, or whole, unsuccessful, the Applicant shall be required to submit a revised or supplemental mitigation program to compensate for those portions of the original mitigation program which were not successful. At such time, the Applicant must consult with the Development Services Department. The Applicant understands that agreed upon remedial measures may result in extensions to the long-term maintenance and monitoring.

BIOLOGICAL RESOURCE PROTECTION DURING CONSTRUCTION

BIO-2:

The following measures shall be incorporated into project-level construction documents to minimize direct impacts on wildlife movement, nesting or foraging activities and shall include preconstruction protocol surveys to be conducted during established breeding seasons, construction noise monitoring and implementation in order to comply with the FESA, MBTA, Bald and Golden Eagle Protection Act, State Fish and Game Code, and/or the ESL Regulations.

I. Prior to Construction

- A. **Biologist Verification** - The owner/permittee shall provide a letter to the City's Mitigation Monitoring Coordination (MMC) section stating that a Project Biologist (Qualified Biologist) as defined in the City of San Diego's Biological Guidelines (2012), has been retained to implement the project's biological monitoring program. The letter shall include the names and contact information of all persons involved in the biological monitoring of the project.
- B. **Preconstruction Meeting** - The Qualified Biologist shall attend the preconstruction meeting, discuss the project's biological monitoring program, and arrange to perform any follow up mitigation measures and reporting including site-specific monitoring, restoration or revegetation, and additional fauna/flora surveys/salvage.
- C. **Biological Documents** - The Qualified Biologist shall submit all required documentation to MMC verifying that any special mitigation reports including but not limited to, maps, plans, surveys, survey timelines, or buffers are completed or scheduled per City Biology Guidelines, Multiple Species Conservation Program (MSCP), Environmentally Sensitive Lands Ordinance (ESL), project permit conditions; California Environmental Quality Act (CEQA); endangered species acts (ESAs); and/or other local, state or federal requirements.
- D. **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 surveys/survey schedules (including general avian nesting and USFWS protocol), timing of surveys, wetland buffers, avian construction avoidance areas/noise buffers/ barriers, other impact avoidance areas, and any subsequent requirements determined by the Qualified Biologist and the City ADD/MMC. The BCME shall include a site plan, written and graphic depiction of the project's biological mitigation/monitoring program, and a schedule. The BCME shall be approved by MMC and referenced in the construction documents.
- E. **Avian Protection Requirements** - To avoid any direct impacts to raptors and/or any native/migratory birds, removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to September 15). If removal of habitat in the proposed area of disturbance must occur during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction survey shall be conducted within 10 calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results of the pre-construction survey to City DSD for review and approval prior to initiating any construction activities. If nesting birds are detected, a letter report or mitigation

plan in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e. appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities is avoided. The report or mitigation plan shall be submitted to the City for review and approval and implemented to the satisfaction of the City. The City's MMC Section or RE, and Biologist shall verify and approve that all measures identified in the report or mitigation plan are in place prior to and/or during construction.

- F. **Resource Delineation** - Prior to construction activities, the Qualified Biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance adjacent to sensitive biological habitats and verify compliance with any other project conditions as shown on the BCME. This phase shall include flagging plant specimens and delimiting buffers to protect sensitive biological resources (e.g., habitats/flora & fauna species, including nesting birds) during construction. Appropriate steps/care should be taken to minimize attraction of nest predators to the site.
- G. **Education** - Prior to commencement of construction activities, the Qualified Biologist shall meet with the owner/permittee or designee and the construction crew and conduct an on-site educational session regarding the need to avoid impacts outside of the approved construction area and to protect sensitive flora and fauna (e.g., explain the avian and wetland buffers, flag system for removal of invasive species or retention of sensitive plants, and clarify acceptable access routes/methods and staging areas, etc.).

II. During Construction

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

III. Post Construction Measures

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

BIO-3 (General Birds)

To avoid any direct impacts to raptors and/or any native/migratory birds, removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to September 15). If removal of habitat in the proposed area of disturbance must occur during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction (precon) survey shall be conducted within 10 calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results of the precon survey to City DSD for review and approval prior to initiating any construction activities. If nesting birds are detected, a letter report or mitigation plan in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e. appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities is avoided. The report or mitigation plan shall be submitted to the City DSD for review and approval and implemented to the satisfaction of the City. The City's MMC Section or RE, and Biologist shall verify and approve that all measures identified in the report or mitigation plan are in place prior to and/or during construction. If nesting birds are not detected during the precon survey, no further mitigation is required.

The above mitigation monitoring and reporting program will require additional fees and/or deposits to be collected prior to the issuance of building permits, certificates of occupancy and/or final maps to ensure the successful completion of the monitoring program.

Proj. No. 333312, City Heights Canyons Enhancements

Exhibit A Plans

(Hearing Officer provided)



City Heights Area Planning Committee

P.O. BOX 5859
SAN DIEGO, CA 92165

June 4, 2014

Memo For: Tim Daly, Project Manager

From: Patty Vaccariello, Chair

SUBJECT: City Heights Canyons Restoration and Trails Project.

1. At its June 2, 2014 meeting the Committee heard a presentation from Eric Bowlby of San Diego Canyonlands regarding the City Heights Canyons Restoration and Trails project. This project is funded by an Urban Greening Grant. At a prior meeting, in 2011, the CHAPC approved the grant submittal.

After discussion regarding maintenance issues there was a motion to approve Canyonlands Site Development Permit for this project and the motion passed 12/1/0 chair not voting.

2. City Heights is one of the city's older, urban communities and considers our canyons a wonderful and rare resource. We support the restoration of 14 acres of wildlife habitat. However, the Committee would like to interject a note of caution. Humans left many of our canyons in a disturbed condition. Introducing more people into the canyons may not be the solution to the long term health of the native flora and fauna that call our canyons home.

Cc: Eric Bowlby



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: August 8, 2013

TO: Tim Daly, Development Project Manager, Development Services Department

FROM: Chris Zirkle, Deputy Director, Open Space Division, Park and Recreation Department *Ch*

SUBJECT: Proj No. 333312, City Heights Canyons Enhancements and Trails Project, Ownership Disclosure

San Diego Canyonlands (SDCL) is processing the above discretionary action to restore, enhance and improve habitat and trails within four City Heights canyons. We acknowledge that all proposed activities will be on City of San Diego land managed by the City of San Diego Park and Recreation Department (Community Parks and Open Space Division), or City Right of Way (paper streets and utility access easements) managed by the Public Utilities and/or the Transportation and Storm Water Department. SDCL has worked with Park and Recreation and the other managing departments to ensure the project's scope of work can be approved and we support accepting Canyonlands application for review.

If we can be of assistance in expediting the review and processing of the project, please let us know. Feel free to contact me at 619-685-1323 or Laura Ball at 619-685-1301.



LICENSE AGREEMENT

THIS LICENSE AGREEMENT, (Agreement), is executed between THE CITY OF SAN DIEGO, a California municipal corporation (SAN DIEGO), and SAN DIEGO CANYONLANDS Inc., a California corporation (LICENSEE), to establish and provide terms and conditions of LICENSEE's use of certain real property. Following the final adoption of the SAN DIEGO City Council Ordinance authorizing this Agreement and subsequent execution by the parties, this Agreement shall be effective upon the date it is executed by the SAN DIEGO City Attorney in accordance with Charter section 40.

RECITALS

WHEREAS, SAN DIEGO is the legal owner of a portion of that certain real property commonly known as Manzanita Canyon, Swan Canyon, 47th Street Canyon, Hollywood Canyon, Azalea Park and Hollywood Park, located in the City of San Diego, County of San Diego, State of California, and more particularly shown in a depictions thereof marked Exhibits "A" and "A-1" through "A-4" attached hereto and by this reference made part of this Agreement (Fee Properties);

WHEREAS, a portion of that certain real property commonly known as Manzanita Canyon, located in the City of San Diego, County of San Diego, State of California, was dedicated for highway purposes to the public pursuant to Map No. 1696 for Lexington Park recorded at the Office of the San Diego County Recorder on June 15, 1917, and more particularly shown in Exhibit "A-1" (Manzanita Highway Properties);

WHEREAS, a portion of that certain real property commonly known as Azalea Park, located in the City of San Diego, County of San Diego, State of California, was dedicated for street purposes to the public pursuant to Map No. 1696 for Lexington Park recorded at the Office of the San Diego County Recorder on June 15, 1917, and more particularly shown in Exhibit "A-1" (Azalea Highway Properties);

WHEREAS, a portion of that certain real property commonly known as Swan Canyon, located in the City of San Diego, County of San Diego, State of California, was dedicated for _____ purposes to the public pursuant to Map No. _____ recorded at the Office of the San Diego County Recorder on _____, and more particularly shown in Exhibit "A-2" (Swan Highway Properties);

WHEREAS, a portion of that certain real property commonly known as 47th Street Canyon, located in the City of San Diego, County of San Diego, State of California, was dedicated for _____ purposes to the public pursuant to Map No. _____ recorded at the Office of the San Diego County Recorder on _____, and more particularly shown in Exhibit "A-3" (47th Street Highway Properties);

WHEREAS, a portion of that certain real properties commonly known as Hollywood Canyon and Hollywood Park, located in the City of San Diego, County of San Diego, State of California,

was dedicated for highway purposes to the public pursuant to Map No. 1696 for Lexington Park recorded at the Office of the San Diego County Recorder on June 15, 1917, and more particularly shown in Exhibit "A-4" (Hollywood Highway Properties);

WHEREAS, LICENSEE is SAN DIEGO CANYONLANDS, a California corporation, whose principle place of business is located at 3552 Bancroft Street, San Diego, CA 92104;

WHEREAS, the Manzanita Highway Properties, Swan Highway Properties, 47th Street Highway Properties, Hollywood Highway Properties, and Azalea Highway Properties (collectively "Highway Properties") and the Fee Properties contain water, sewer and stormwater facilities owned by SAN DIEGO and unimproved canyon and trails;

WHEREAS, LICENSEE is the recipient of the Strategic Growth Council's Sustainable Communities Urban Greening Project Grant Program under the Safe Drinking Water, Water Quality, and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, (Proposition 84), and LICENSEE has entered into Grant Agreement No. U59255-0 with the State of California, attached as Exhibit "B" (Grant);

WHEREAS, LICENSEE, as a requirement of the Grant, desires to secure from SAN DIEGO a nonexclusive temporary License (License) to use a portion of the Fee Properties and Highway Properties as more particularly shown in Exhibits "A-1" through "A-4" (Properties) to implement the Grant; and

WHEREAS, SAN DIEGO grants to LICENSEE and LICENSEE accepts from SAN DIEGO a nonexclusive temporary license to use the Properties under the terms, covenants, conditions and provisions contained herein.

A G R E E M E N T

1. Use. SAN DIEGO grants permission to LICENSEE to use the Properties, in accordance with the terms, covenants, conditions and provisions of this Agreement and the Scope of Work, attached hereto as Exhibit "C", for habitat restoration, nature trail enhancement and creation, interpretive sign and trail marker installation, the maintenance of the foregoing, and provide recreational programs to the public ("Uses"). LICENSEE shall not engage in any activity or use on the Properties other than as expressly set forth in this Agreement.
2. Acceptance of Properties. LICENSEE acknowledges the condition of the Properties in their present As-Is and Where-Is condition without warranty, expressed or implied. By signing this Agreement, LICENSEE represents and warrants that it has independently inspected the Properties and the area immediately surrounding the Properties and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Properties and all improvements appurtenant thereto. LICENSEE acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Agreement and its use of the Properties, and that SAN DIEGO has made no warranty or representation with regard to the Properties. LICENSEE further acknowledges that the Properties is in the condition called for by this Agreement, and SAN DIEGO shall not be

responsible for any latent defect or change in condition in the Properties and LICENSEE's obligations under this Agreement shall not be diminished on account of any defect in the Properties, any change of condition, or any damages occurring on the Properties.

LICENSEE hereby releases SAN DIEGO from all future claims, actions, or demands that LICENSEE may have or may hereinafter have, known and unknown, in any way relating to the quality, fitness, or condition of the Properties, and LICENSEE specifically waives all rights under California Civil Code section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

3. Reservation. SAN DIEGO shall not unreasonably interfere with LICENSEE's use of the Properties while LICENSEE is in compliance with all the terms, covenants, conditions and provisions of this Agreement. However, SAN DIEGO reserves the right to access, enter and conduct work on, over and under the Properties at all times, without prior notice to LICENSEE, at SAN DIEGO's sole discretion.
4. Fee. LICENSEE shall pay SAN DIEGO a one-time non-refundable license fee in the amount of six hundred dollars (\$600.00) for use of the Properties, upon execution of this Agreement. The license fee is waived because of the public benefit from the activities to facilitate improvements to SAN DIEGO parkland at LICENSEE's sole cost and there is a significant public benefit of habitat restoration.
5. Contingency. Before restoration work on the Properties begins pursuant to this Agreement, LICENSEE must provide to SAN DIEGO documentation regarding the issuance of the Grant funds showing that LICENSEE has received approval to begin construction of the Uses and seek reimbursement from the State of California.
6. Termination. The license granted by this Agreement shall cease and terminate immediately on June 30, 2036 (Term). Additionally, SAN DIEGO may terminate this Agreement and all of the rights and privileges granted herein: (a) any time after six (6) months of continuous non-use of any of the Properties by LICENSEE; (b) thirty (30) days after SAN DIEGO'S delivery of a notice of breach of any obligation of LICENSEE'S under this Agreement, if such breach has not been corrected to the City's satisfaction; or (c) as required by law or by a court of competent jurisdiction.

It is mutually agreed that SAN DIEGO shall not be obligated for any loss, financial or otherwise, which may be incurred by LICENSEE as a result of termination of this Agreement, and, further, that LICENSEE expressly waives any claim for expense or loss which LICENSEE might incur as a result of termination of this Agreement.

The Term may be extended, at the request of the LICENSEE as set out in this Section 6, in the sole discretion of SAN DIEGO and as approved by City resolution or ordinance. No later than 150 days prior to the expiration of the Term, LICENSEE shall submit to SAN DIEGO its written request for an extension.

7. Superior Rights. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Properties, whether or not of record. LICENSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Properties, relative to any such superior interest. If LICENSEE'S use of the Properties is or becomes inconsistent or incompatible with a preexisting, superior interest, LICENSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

Nothing in this Agreement is intended to prohibit or limit the legal public use of the Properties. LICENSEE shall incur no liability arising from the legal public use of the Properties.

8. Commencement of Work and Public Access. LICENSEE must contact the Park and Recreation Director, at least two working days prior to the start date of any and all work on the Properties and submit a work schedule. LICENSEE shall notify the Park and Recreation Director a minimum of ten (10) working days prior to start of work that may affect the use of any public access in the Properties.
9. Vehicular Traffic. All vehicular traffic by or under control of the LICENSEE shall be confined to sewer access roads, concrete, asphalt or decomposed aggregate surfaces unless approved otherwise by the Open Space Canyons Senior Park Ranger prior to the commencement of the LICENSEE's operations.
10. Water Quality Assurances. LICENSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") Permit No. R9-2007-0001 in force when this Agreement takes effect, and with any NPDES permit which succeeds R9-2007-0001. LICENSEE shall comply with San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control), as amended from time to time. Compliance shall include implementing "Best Management Practices" to control and prevent discharge of "Pollutants," including waste, debris, and sediment, into "Storm Water Conveyance System" to the "Maximum Extent Practicable," as those terms are defined in the Municipal Code. "Best Management Practices" shall include: 1) applying effective soil erosion control practices for areas of soil and vegetation disturbance; (2) applying effective sediment control practices down slope of areas of soil and vegetation disturbance; (3) covering or otherwise protecting materials that are stored on-site; and (4) carefully controlling application of fertilizers and pesticides.
11. Grading. Due to Storm Water Pollution Prevention Plan requirements, grading, filling, dumping, new planting or fencing beyond what is shown on the approved plans, attached as Exhibit "C", is prohibited unless first approved in writing by the Park and Recreation Director. LICENSEE will conduct minor mechanized grading only in areas shown in Exhibit "C". Mechanized grading may occur in areas on maps in Exhibit "C" showing the project stairs, retaining walls and switchbacks. Any violations will be corrected by LICENSEE at its

sole cost and expense to the satisfaction of the Park and Recreation Director and are grounds, at SAN DIEGO's option, for immediate termination of this Agreement. Minor alterations to the surface grade are allowed to provide trail improvements and restoration in accordance with the restoration plan, attached as Exhibit "C", or with prior written approval from the Park and Recreation Director.

12. Pre-Construction Meeting. A minimum of five (5) working days prior to commencement of construction or any maintenance or repair work, LICENSEE shall invite the Park and Recreation Director to the pre-construction meeting. This meeting shall establish points of contact, define means and methods of LICENSEE's operations and coordinate the work schedule with Park and Recreation operations and scheduled activities.
13. Contractors and Subcontractors. Not less than 30 days prior to commencement of any work, LICENSEE shall provide a list of any and all contractors and subcontractors to the Open Space Canyons Senior Park Ranger, including name, address, email, fax and phone number. All contracted work shall be done by contractors licensed within the State of California and shall comply with any and all applicable local, state and federal laws, rules and regulations, including, but not limited to, applicable prevailing wage laws.
14. Volunteers. LICENSEE shall be responsible for any work to be done with volunteer labor on behalf of LICENSEE and ensure that volunteer workers adhere to all conditions as stated in this Agreement and the Scope of Work, included herein as Exhibit "C". Any work done that is not previously approved shall be removed at the LICENSEE's sole cost and expense.
15. Maintenance and Ownership of Improvements. LICENSEE, at LICENSEE'S sole cost and expense to the extent provided in Exhibit "C", shall maintain the Properties together with any improvements restored, created, constructed or installed thereon by LICENSEE or related to LICENSEE'S use of the Properties as authorized by this Agreement.

Upon satisfaction of the Success Criteria in Exhibit "C" and acceptance by SAN DIEGO, the habitat restoration improvements shall become the property of SAN DIEGO. Consistent with Exhibit "C", LICENSEE shall maintain habitat restoration areas until it has met the Success Criteria as set forth in Section II.A.10 of Exhibit "C". Upon LICENSEE's compliance with the Success Criteria as set forth in Section II.A.10 of Exhibit "C," SAN DIEGO will maintain the habitat restoration areas, contingent on the SAN DIEGO City Council approving the budget, appropriating funding, and authorizing such maintenance in any given fiscal year. However, LICENSEE will continue to perform maintenance of the habitat restoration areas with its volunteers for the term of this Agreement.

Upon construction of the trails and trail signage in accordance with Exhibit "C", the applicable local, state and federal laws, rules and regulations, and acceptance by SAN DIEGO, the trails and trails signage improvements shall become the property of SAN DIEGO. Prior to the construction of the trails and trail signage improvements, LICENSEE shall pay to SAN DIEGO Twenty Thousand Dollars (\$20,000), to be deposited by SAN DIEGO into a special interest-bearing wasting fund account, for the sole purpose of SAN DIEGO performing maintenance of all new trail and trail signage improvements pursuant to

Exhibit "C" only if LICENSEE fails to perform said maintenance. Any funds remaining in the said special account at the termination of this Agreement or at the end of the maintenance obligations as required by the Grant, whichever occurs first, shall be returned to the LICENSEE unless LICENSEE is dissolved, in which case said funds shall be retained by SAN DIEGO for use on the Properties for trail improvements and/or habitat restoration.

"Acceptance" means the final written approval by SAN DIEGO following a final inspection once the work is complete and all work on punch lists has been completed to the satisfaction of SAN DIEGO.

16. Security and Safety. The security and safety of the Properties affected by any and all work performed by LICENSEE, its contractors, subcontractors and volunteers shall be the sole responsibility of LICENSEE during the entire Term of this Agreement. LICENSEE shall be responsible for the maintenance and cleanup of the Properties immediately following each day's work. Construction fence and warning signs, if required, must be properly maintained on a daily basis. Trenches shall not be left open overnight or any other time when work associated with the LICENSEE's operations are not being actively performed.
17. Nuisance. LICENSEE shall not use the Properties in any manner which, in the opinion of SAN DIEGO, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
18. Staging Area. The Park and Recreation Director must approve any area where building or construction materials or vehicles are requested to be secured on the Properties overnight. All materials must be secured inside a locked storage container or surrounded by fencing. At no time shall any debris be left on the Properties that may be a hazard to public safety.
19. Access. LICENSEE shall notify SAN DIEGO at least twenty-four (24) hours in advance of its need to access the Properties for the Uses authorized by this Agreement. Notwithstanding the foregoing, in case of emergency, LICENSEE shall provide only as much notice as is practicable. SAN DIEGO shall not unreasonably delay providing access to the Properties in any case.

Daily activities such as watering or weeding plants, replacing dead plants, adding plants to a prescribed restoration site, routine trail maintenance, such as raking trails or trimming back vegetation with hand tools, and operation of recreational programs to the public would not require notice by LICENSEE to SAN DIEGO. Notwithstanding the foregoing, LICENSEE shall comply with all local, state and federal rules, regulations, ordinances and laws that apply to the use and operation of recreational programs, including, but not limited to, the California Environmental Quality Act and section 63.0102(b)(24) of the San Diego Municipal Code.

20. Conflicting Repairs: Notice. Except in the case of an emergency, if any facilities in, on, under, or above the Properties are to be repaired, replaced, or relocated, and such work may adversely affect the Properties, SAN DIEGO shall notify LICENSEE in writing at least ten (10) days prior to commencement of the work. Such notice shall state the scope and

expected duration of such work and offer a reasonable alternate route to serve the purpose of this Agreement.

21. Property Damage. LICENSEE shall pay for all damage to the Properties and SAN DIEGO'S personal property on the Properties resulting from LICENSEE'S exercise of the rights granted herein. This shall include, but not be limited to paving, fencing, irrigation systems, turf, structures, electrical systems and any item determined to be damaged by the Senior Park Ranger, as a result of LICENSEE'S operations or use of the Properties. LICENSEE shall, at its sole cost and expense, promptly repair and restore all such Properties to its original condition. Plants and trees damaged beyond repair shall be replaced with the same species and of similar size and value, at the LICENSEE'S sole cost and expense. Replaced turf shall be installed sod and not seed or sprigs. LICENSEE shall also be responsible for all mitigation requirements as a result of impacts to any biological area caused by the LICENSEE'S operations or use of the Properties.
22. Taxes & Fees. LICENSEE alone shall pay any and all taxes, charges and use fees levied by any governmental agency against LICENSEE as a result of this Agreement. LICENSEE shall not cause, suffer, permit or allow liens or encumbrances of any kind to be placed against the Properties, and in case of any such lien or encumbrance attaching, or claim thereof being asserted, LICENSEE shall cause it to be immediately released and removed of record.
23. Permits & Approvals. LICENSEE, at LICENSEE's sole cost and expense, shall secure all applicable permits and approvals from the applicable local, state, and federal authorities, including, but not limited to, SAN DIEGO.
24. Compliance with Laws. LICENSEE, at LICENSEE's sole cost and expense, shall comply with all applicable laws, ordinances and regulations of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, including without limitation all applicable regulatory, environmental and safety requirements.
25. Hazardous Substances. LICENSEE shall not authorize the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Properties. LICENSEE and LICENSEE'S agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Properties without SAN DIEGO'S prior written consent. LICENSEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
 - a. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency ("EPA") or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Agreement.

- b. Remediation. If a release of a hazardous substance, or petroleum related substance or its chemical constituents occurs resulting from LICENSEE'S occupancy, use, development, maintenance, or restoration of the Properties, LICENSEE shall pay all costs of remediation and removal to SAN DIEGO's satisfaction for the same reuse of the Properties as the Properties provided prior to the release, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- c. Removal. If LICENSEE or LICENSEE'S contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Properties, LICENSEE and/or LICENSEE'S contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Properties immediately upon or prior to the expiration or earlier termination of this Agreement. SAN DIEGO reserves the right to conduct inspections of the Properties and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Properties. LICENSEE shall be responsible for any and all costs incurred by SAN DIEGO to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- d. Indemnity. LICENSEE shall protect, defend, indemnify, and hold SAN DIEGO harmless from any and all claims, costs, and expenses related to environmental liabilities to the extent they result from LICENSEE'S occupancy, use, development, maintenance, or restoration of the Properties pursuant to this Agreement, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary SAN DIEGO response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LICENSEE'S officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies. SAN DIEGO shall protect, defend, indemnify, and hold LICENSEE harmless from any and all claims, costs, and expenses related to environmental liabilities arising solely from conditions existing, or acts or omissions occurring, prior to LICENSEE'S use of the Properties.
- e. Notice of Release. If LICENSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Properties, LICENSEE shall immediately notify SAN DIEGO and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LICENSEE shall deliver a

written report thereof to SAN DIEGO within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LICENSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LICENSEE shall take all actions necessary to alleviate the danger. LICENSEE shall immediately notify SAN DIEGO in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Properties.

- f. Environmental Assessment. Upon reasonable cause to believe that LICENSEE'S occupancy, use, development, maintenance, or restoration of the Properties ("LICENSEE'S Operations"), resulted in any hazardous substance being released on, from or beneath the Properties, SAN DIEGO may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LICENSEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LICENSEE'S Operations on, in, from or under the Properties, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require re-use of the Properties to be restricted beyond the use allowed prior to LICENSEE'S use and occupancy, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LICENSEE shall cause, or if LICENSEE fails to do so within a reasonable period of time, as determined by SAN DIEGO in its sole discretion, SAN DIEGO may cause the remediation and/or removal recommended in the environmental assessment such that re-use of the Properties shall not be restricted beyond the use allowed prior to LICENSEE'S use, and compliance with environmental law and regulations are achieved, and LICENSEE shall pay all costs and expenses therefor.

26. Insurance - LICENSEE shall not begin any work under this Agreement until it has: (a) obtained, and upon SAN DIEGO'S request provided to SAN DIEGO, insurance certificates reflecting evidence of all insurance required in below; however, SAN DIEGO reserves the right to request, and the LICENSEE shall submit, copies of any policy upon reasonable request by SAN DIEGO; (b) obtained SAN DIEGO approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LICENSEE'S liabilities, including but not limited to LICENSEE'S indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and LICENSEE'S failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by SAN DIEGO. The LICENSEE shall not modify any policy or endorsement thereto which increases the SAN DIEGO'S exposure to loss for the duration of this Agreement.

- a. Types of Insurance. At all times during the term of this Agreement, the LICENSEE shall maintain insurance coverage as follows:
1. Commercial General Liability. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 2. Commercial Automobile Liability. For all of the LICENSEE's automobiles including owned, hired and non-owned automobiles, the Licensee shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and Properties damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 3. Workers' Compensation. For all of the LICENSEE's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the LICENSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and the LICENSEE shall provide an endorsement that the insurer waives the right of subrogation against SAN DIEGO and its respective elected officials, officers, employees, agents and representatives.
- b. Deductibles. All deductibles on any policy shall be the responsibility of the LICENSEE and shall be disclosed to SAN DIEGO at the time the evidence of insurance is provided.
- c. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by SAN DIEGO.
- SAN DIEGO will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- d. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to SAN DIEGO before any work is initiated under this Agreement.

1. Commercial General Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LICENSEE's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LICENSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

2. Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the LICENSEE.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that LICENSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

3. Worker's Compensation Insurance Endorsements

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against SAN DIEGO and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for SAN DIEGO.

27. Indemnification. LICENSEE shall protect, defend, indemnify, and hold SAN DIEGO, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or Properties, including injury to LICENSEE'S officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Agreement, entering into this Agreement, the Uses, or LICENSEE'S operations or use of the Properties, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LICENSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence or sole willful misconduct of SAN DIEGO or its elected officials, officers, representatives, agents or employees. SAN DIEGO may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification.

28. LICENSEE Contact. LICENSEE shall provide a designated contact with name and emergency phone number as listed here:

Name: Eric Bowlby	Alternate contact: Carrie Schneider
Cell Number: (619) 204-0753	Cell Number: (858) 232-9744
Office Number: (619) 284-9399	Office Number: (858) 232-9744

29. Notices. Each notice required or permitted to be given under this Agreement shall be in writing and addressed to the recipient at the address stated below, and by any of the following means: (a) by personal service; (b) by deposit with the United States Postal Service and mailed postage-prepaid with a return receipt requested; or (c) by deposit with a nationally recognized overnight courier.

LICENSEE: San Diego Canyonlands
3552 Bancroft St.
San Diego, CA 92104
Attention: Eric Bowlby
Email: cric@sdcanyonlands.org

SAN DIEGO: THE CITY OF SAN DIEGO
Attn: Real Estate Assets Department
1200 Third Avenue, Suite 1700
M. S. 51A
San Diego, CA 92101
Telephone: (619) 236-6020

Open Space Canyons
Senior Park Ranger
Open Space Division
202 C Street, 5th Floor, MS 5D

San Diego, CA 92101
Telephone: 619-235-5262

30. Survival. Any right or obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
31. License Only. The permission herein granted is a license only and does not constitute a lease or create any interest or estate for LICENSEE or any third party in the Properties, or any part thereof.
32. Relationship between SAN DIEGO and LICENSEE, and SAN DIEGO and Third Parties. It is hereby acknowledged that the relationship between SAN DIEGO and LICENSEE is that of licensor and licensee at will and shall, in no event, be deemed to create any other relationship, including, but not limited to, a partnership or joint venture, and that SAN DIEGO and LICENSEE shall not be deemed or construed for any purpose to be the agent of the other.
- Notwithstanding anything to the contrary in this Agreement, SAN DIEGO is not a party to the Grant and the parties agree that SAN DIEGO shall have no duties or obligations to the State of California or any other third party pursuant to the Grant, to refund any monies distributed pursuant to the Grant, or with respect to the improvement, maintenance or upkeep of the Properties.
33. No Third Party Beneficiary. The parties agree that this Agreement is made solely for the benefit of SAN DIEGO and LICENSEE, and no third person or entity shall be deemed to have any rights or remedies hereunder.
34. Drug-Free Workplace. LICENSEE agrees to comply with the SAN DIEGO's Drug-Free Workplace requirements set forth in City Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference.
35. ADA Certification. LICENSEE hereby certifies that it agrees to comply with SAN DIEGO's Americans with Disabilities Act Compliance/Contracts requirements set forth in SAN DIEGO Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.
36. Compliance with SAN DIEGO's Equal Opportunity Contracting Program. LICENSEE shall comply with SAN DIEGO's Equal Opportunity Contracting Program Contractor Requirements. LICENSEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law. LICENSEE shall provide equal opportunity in all employment practices. LICENSEE shall ensure that its subcontractors comply with SAN DIEGO's Equal Opportunity Contracting Program Contractor Requirements. Nothing in this section shall be interpreted to hold LICENSEE liable for any discriminatory practice of its subcontractors.
37. No Discrimination. LICENSEE agrees not to discriminate in any manner against any person

or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LICENSEE's use of the Properties, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

LICENSEE shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of Contractors, Subcontractors, vendors or suppliers, or the use, occupancy, tenure or enjoyment of the Properties, nor shall LICENSEE itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation. LICENSEE shall provide equal opportunity for Contractors and Subcontractors to participate in contracting and subcontracting opportunities. LICENSEE understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in termination, debarment, and other sanctions. This language shall be in contracts between LICENSEE and any Contractors, Subcontractors, vendors and suppliers.

38. Equal Benefits Ordinance. This Agreement is subject to the San Diego Equal Benefits Ordinance (EBO), Chapter 2, Article 2, Division 43 of the San Diego Municipal Code (SDMC). LICENSEE is required to complete the Equal Benefits Ordinance Certification of Compliance included herein as Exhibit "D".

In accordance with the EBO, LICENSEE must certify it will provide and maintain equal benefits as defined in SDMC §22.4302 for the duration of the Agreement [SDMC §22.4304(f)]. Failure to maintain equal benefits is a material breach of this Agreement [SDMC §22.4304(e)]. LICENSEE must notify employees of its equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

"During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners."

LICENSEE also must give SAN DIEGO access to documents and records sufficient for SAN DIEGO to verify LICENSEE is providing equal benefits and otherwise complying with EBO requirements. Full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on SAN DIEGO's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

39. Successors and Assigns. LICENSEE acknowledges that any and all rights granted by this Agreement are personal solely to LICENSEE. LICENSEE shall not assign any rights granted by this Agreement nor any interest therein without the prior written approval of SAN DIEGO. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the Mayor. Any assignment by operation of law shall automatically terminate this Agreement.
40. Modification. This Agreement may not be modified, amended or discharged except by an

instrument in writing signed by the parties hereto. No waiver or consent may be enforced unless such waiver or consent shall be in writing and signed by the party against whom enforcement thereof is sought.

41. Non-liability of Officials. No member, official or employee of SAN DIEGO shall be personally liable to LICENSEE, its assigns or successors in interest, in the event of any default or breach by SAN DIEGO, for any amount which may become due to LICENSEE, its assigns or successors, or in any obligations under the terms of this Agreement.

No member, official, board member or employee of LICENSEE shall be personally liable to SAN DIEGO, its assigns or successors in interest, in the event of any default or breach by LICENSEE, for any amount which may become due to SAN DIEGO, its assigns or successors, or in any obligations under the terms of this Agreement.

42. Applicable Law and Venue. This Agreement shall be governed by the laws of the State of California. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, any litigation concerning this Agreement shall be initiated in the Superior Court of San Diego County, Central Division.
43. Legal Proceedings. In the event of any controversy, claim, or dispute relating to the Uses or the Properties, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.
44. Joint and Several Responsibility. If LICENSEE includes more than one person or legal entity, each such person and legal entity shall be jointly and severally responsible for the performance of each and every obligation of LICENSEE under this Agreement.
45. Paragraph Headings. Paragraph or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.
46. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
47. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
48. No Representations or Warranties. There are no representations and warranties by the parties, their agents, servants and employees whether oral or in writing, relating to or concerning this Agreement other than as specifically set forth herein. Each of the parties hereto warrants and represents to the other that it is authorized or empowered to enter into this Agreement and perform the terms hereof.

49. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the use of the Properties and the obligations assumed herein, and supersedes all prior negotiations, representations, or agreements. No modification of this Agreement shall be valid unless in writing and signed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed as of the date set forth hereunto their signatures herein below.

Date: 10/28/13

LICENSEE

Eric Bowly

Date: 2-10-14

THE CITY OF SAN DIEGO, a California municipal corporation

BY: Jacey Q.

Name: JACEY Q. MEDICO

Title: ASST CHIEF OPERATING OFFICER

Approved as to Form:

Date: February 12, 2014

JAN I. GOLDSMITH, City Attorney

BY: Hilda R. Hernandez

Name: Hilda R. Hernandez

Title: Deputy City Attorney

- Exhibit "A": Location Map
- Exhibit "A-1": Manzanita Canyon and Azalea Park Map
- Exhibit "A-2": Swan Canyon Map
- Exhibit "A-3": 47th Street Canyon Map
- Exhibit "A-4": Hollywood Canyon and Hollywood Park Map
- Exhibit "B": Strategic Growth Council's Sustainable Communities Urban Greening Project Grant Program under the Safe Drinking Water, Water Quality, and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, (Proposition 84) Grant Agreement No. U59255-0
- Exhibit "C": Scope of Work
- Exhibit "D": Equal Benefits Ordinance Certification of Compliance

0-20210

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF SAN DIEGO)

On October 28, 2013 before me, VIRGINIA KEELER, a notary public in and for said County and State, personally appeared Eric Bowley personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal:

Virginia Keeler
(Signature of Notary Public)



CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF _____)

On _____ before me, _____, a notary public in and for said County and State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal:

(Signature of Notary Public)

DEVELOPMENT SERVICES

Project Chronology**City Heights Canyon Enhancenebts – Project No. 333312**

Date	Action	Description	City Review Time	Applicant Response
7/31/13	First Submittal	Project Deemed Complete.		
9/17/13	First Assessment Letter		48 days	
12/5/13	Second Submittal			79 days
1/13/14	Second Review Complete		39 days	
3/5/14	Third Submittal			51 days
3/25/14	Third Review Complete		20 days	
5/1/14	Draft MND			
6/20/14	Final MND			
7/23/14	HO Hearing		120 days	
TOTAL STAFF TIME			227 days	
TOTAL APPLICANT TIME				130 days
TOTAL PROJECT RUNNING TIME		From Deemed Complete to Hearing Officer	11 months 7 days	

