



County of San Diego

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PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.

Ms Sherrill Schoepe
Shadow Run Ranch, LLC
PO Box 1249
Pauma Valley, CA 92061

DECISION OF THE DIRECTOR Habitat Loss Permit

APPLICATION NUMBER: HLP XX-XXX, ER 00-02-035

ASSOCIATED PERMIT(S): TM 5223

NAME OF APPLICANT: Ms. Sherrill Schoepe

DESCRIPTION/LOCATION OF LOSS:

The project is a major subdivision of 248 acres into forty-four residential lots ranging in size from 2.0 to 7.35 acres, and three open space lots including a recreation open space lot, biological open space lot, and agriculture open space lot. The project will impact 3.5 acres of Diegan coastal sage scrub (CSS) as shown on the attached Habitat Loss Exhibit. The project includes the grading of forty-four new residential pads as well as the construction of access roads and driveways.

The project site lies along the SR-78, just northwest of Adams Drive within the Pala- Pauma Community Planning Area of the unincorporated San Diego County as indicated on the attached USGS map. Surrounding uses include rural residential, agricultural uses, and undeveloped land.

Biological Resources were evaluated by Vince Scheidt (March 2014). The habitats on-site include orchards and vineyards, chamise chaparral, Diegan coastal sage scrub, southern sycamore-alder riparian woodland, southern coast live oak riparian forest, floodway, coast live oak woodland, open water, disturbed habitat, urban/developed, and field/pasture. No sensitive plant species and 12 sensitive wildlife species were observed on site: Cooper's hawk, White-tailed kite, turkey vulture, yellow warbler, southern California rufous-crowned sparrow, red-shouldered hawk, great blue heron, mountain lion, mule deer, San Diego desert woodrat, coastal western whiptail, orange-throated whiptail. Protocol California gnatcatcher surveys were performed in 2001, 2005, and 2009 and were all negative. Protocol Arroyo toad surveys conducted in 2007 were negative. No protocol surveys were conducted for Least Bell's vireo or Southwestern willow flycatcher despite their presence in the San Luis Rey River; therefore, the site is considered potentially occupied by both species. Habitat acreage and impacts are shown in the table below.

On-site preservation is proposed to protect vegetation in the drainages along the project's northern and western boundaries, with a 50-200 foot wetland buffer surrounded by a 100-foot LBZ (200 foot LBZ around the northern pad). The southern drainage would also be dedicated biological open space easement, but due to its small size and edge effects it's considered impact neutral. The habitat within RPO wetland and buffers is also counted as impact neutral. The project will include a condition prohibiting brushing, clearing and/or grading during the breeding season of the Least Bell's vireo and Southwestern willow flycatcher (March 15 through September 15).

The proposed project would impact 115.2 acres on-site and off-site improvements, as listed in Table 1. Mitigation will occur through the on-site preservation and offsite purchase of 2.1 acres of coast live oak woodland and 0.3 acres of field/ pasture. The Diegan coastal sage scrub habitat onsite is considered to be of intermediate quality as determined by the criteria established under the Natural Community Conservation Planning (NCCP) Logic Flow Chart. Mitigation ratios are listed in Table 1. With the above mentioned mitigation, all impacts associated with the development of the Shadow Run property would be mitigated to a level below significance. The proposed project is in conformance with all standards and guidelines outlined in the NCCP Process Guidelines.

Table 1

Habitat Type	Acreage	Impacted Acreage onsite/ offsite	Proposed Mitigation Ratio	Proposed Open Space Acreage	Impact Neutral	Offsite Mitigation Acreage
Orchards and vineyards	142.9	95.8 / 0.8	n/a	6.4	5.5	n/a
Chamise chaparral	0.5	0	n/a	0.5	0	
Diegan coastal sage scrub	50.0	1.2 / 2.3	2:1/ 3:1	25.0	20.2	
Southern sycamore-alder riparian woodland	2.5	0	3:1	0	2.5	
Southern coast live oak riparian forest	3.3	0	3:1	0	3.3	
Floodway	2.0	0	n/a	0	2.0	
Coast live oak woodland	23.8	3.0 / 0.1	3:1/ 4:1	7.5	9.6	2.1
Open water	2.7	0	n/a	0	2.7	
Disturbed habitat	11.0	0/2.2	n/a	2.7	6.1	
Urban/developed	9.8	9.3	n/a	0.1	0.1	
Field/pasture	0.5	0.5	0.5:1	0	0	0.3
TOTAL	249.0	115.2		42.2	52	2.4

DECISION:

The Director of Planning & Development Services has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) concur with the Director's approval, by the either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFW, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for the loss of the above-described coastal sage scrub habitat (see attached Habitat Loss Exhibit) and incidental take of the California gnatcatcher for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDFW. If the loss of habitat, as authorized by this Habitat Loss Permit, has not occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of coastal sage scrub habitat expires.

Pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for this additional loss of coastal sage scrub as described above and shown on the attached Habitat Loss Exhibit for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDFW. If the loss of habitat, as authorized by this Habitat Loss Permit, has not occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of coastal sage scrub habitat that was not previously cleared, graded or removed expires.

This Habitat Loss Permit cannot be relied upon for the clearing, grading or removal of any vegetation until a valid Grading Permit, Clearing Permit or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal. Furthermore, use and reliance upon this Habitat Loss Permit cannot occur until all of the requirements as specified within the "Conditions of Approval" section of this permit have been satisfied.

CONDITIONS OF APPROVAL:

The following conditions are being placed on TM 5223. For the final Habitat Loss Permit, the list of conditions will be modified to require satisfaction of all conditions prior to use and reliance on the HLP.

APPROVAL OF MAP: The conditions shall be complied with before a Final Map is approved by the Board of Supervisors and filed with the County Recorder of San Diego County (and,

where specifically, indicated, shall also be complied with prior to approval of any plans, and issuance of any grading or other permits as specified):

BIO#1–BIOLOGICAL EASEMENT [PDS, FEE X 2]

INTENT: In order to protect sensitive biological resources, pursuant to RPO and CEQA, a biological open space easement shall be granted. **DESCRIPTION OF REQUIREMENT:** Grant to the County of San Diego as shown on the approved Conceptual Grading and Development Plan. This easement is for the protection of biological resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation. The only exception(s) to this prohibition are:

1. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the applicable fire code of the Fire Authority Having Jurisdiction and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts and any subsequent amendments thereto.
2. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of PDS, DPR and DPW.
3. Uses, activities, and placement of structures expressly permitted by the Director of PDS, whose permission may be given only after following the procedures and complying with all requirements applicable to an Administrative Permit pursuant to The Zoning Ordinance of the County of San Diego.

DOCUMENTATION: The applicant shall show the easement on the Final map with the appropriate granting language on the title sheet concurrent with Final Map Review - OR - The applicant shall prepare the draft plats and legal descriptions of the easements, then submit them for preparation and recordation with the [DGS, RP], and pay all applicable fees associated with preparation of the documents. **TIMING:** Prior to the approval of the map, and prior to the approval of any plan and issuance of any permit, the easements shall be executed and recorded. **MONITORING:** For recordation on the map, [PDS, LDR] shall route the Final Map to [PDS, PCC] for approval prior to map recordation – OR - for recordation by separate document, the [DGS, RP] shall prepare and approve the easement documents and send them to [PDS, PCC] and [DPR GPM] for preapproval. The [PDS, PCC] shall preapprove the language and estimated location of the easements prior to recordation. Upon Recordation of the easements [DGS, RP] shall forward a copy of the recorded documents to [PDS, PCC] for satisfaction of the condition or if recorded on the map, the [PDS LDR] shall satisfy the condition after map recordation.

BIO#2–LBZ EASEMENT [PDS, FEEX 2]

INTENT: In order to protect sensitive biological resources, pursuant to RPO and CEQA, a Limited Building Zone (LBZ) Easement shall be granted to limit the need to

clear or modify vegetation for fire protection purposes within an adjacent biological resource area. **DESCRIPTION OF REQUIREMENT:** Grant to the County of San Diego a LBZ Easement as shown on the Conceptual Grading and Development Plan. The purpose of this easement is to limit the need to clear or modify vegetation for fire protection purposes within the adjacent biological open space easement and prohibit the construction or placement of any structure designed or intended for occupancy by humans or animals. The only exceptions to this prohibition are:

1. Structures designed or intended for occupancy by humans or animals located no less than 100 feet from the nearest biological open space easement boundary, provided that the structures meet the minimum Fire-Resistive Construction Requirements as defined by the Fire Protection Authority (FPA) having jurisdiction over the property and that FPA has approved in writing a reduction in the vegetation clearing/fuel modification requirements so that they will not be required within any portion of the biological open space easement.
2. Decking, fences, and similar facilities.
3. Sheds, gazebos, and detached garages, less than 250 square feet in total floor area, that are designed, constructed and placed so that they do not require clearing or fuel modification within the biological open space easement, beyond the clearing/fuel modification required for the primary structures on the property.

DOCUMENTATION: The applicant shall show the easement on the Final map with the appropriate granting language on the title sheet concurrent with Final Map Review - OR - The applicant shall prepare the draft plats and legal descriptions of the easements, then submit them for preparation and recordation with the [DGS, RP], and pay all applicable fees associated with preparation of the documents. **TIMING:** Prior to the approval of the map or prior to the approval of any plan and issuance of any permit, the easements shall be recorded. **MONITORING:** For recordation on the map, the [PDS, LDR] shall route the Final Map to [PDS, PCC] for approval prior to map recordation OR for recordation by separate document, the [DGS, RP] shall prepare and approve the easement documents and send them to [PDS, PCC] and [DPR GPM] for preapproval. The [PDS, PCC] shall preapprove the language and estimated location of the easements prior to recordation. Upon Recordation of the easements [DGS, RP] shall forward a copy of the recorded documents to [PDS, PCC] for satisfaction of the condition - OR - if recorded on the map, the [PDS LDR] shall satisfy the condition after map recordation.

BIO#3—OFF-SITE MITIGATION [PDS, FEE X2]

INTENT: In order to mitigate for the impacts to coast live oak woodland and field pasture, which are sensitive biological resources pursuant to the County of San Diego Guidelines for Determining Significance for Biological Resources, off-site mitigation shall be acquired. **DESCRIPTION OF REQUIREMENT:** The applicant shall purchase habitat credit, or provide for the conservation of habitat of 2.1 acres of coast live oak woodland and 0.3 acres of field pasture, located in North County as indicated below.

- a. **Option 1:** If purchasing Mitigation Credit the mitigation bank shall be approved by the California Department of Fish & Game. The following evidence of purchase shall include the following information to be provided by the mitigation bank:

1. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
 2. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
 3. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
 4. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.
- b. **Option 2:** If habitat credit cannot be purchased in a mitigation bank, then the applicant shall provide for the conservation of habitat of the same amount and type of land located in North San Diego County as indicated below:
1. The type of habitat and the location of the proposed mitigation, should be pre-approved by [PDS, PCC] before purchase or entering into any agreement for purchase.
 2. A Resource Management Plan (RMP) shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Content Requirements to the satisfaction of the Director of PDS. If the offsite mitigation is proposed to be owned and/or managed by DPR, the RMP shall also be approved by the Director of DPR.
 3. An open space easement over the land shall be dedicated to the County of San Diego or like agency to the satisfaction of the Director of PDS. The land shall be protected in perpetuity.
 4. The final RMP cannot be approved until the following has been completed to the satisfaction of the Director of PDS: The land shall be purchased, the easements shall be dedicated, a Resource Manager shall be selected, and the RMP funding mechanism shall be in place.
 5. In lieu of providing a private habitat manager, the applicant may contract with a federal, state or local government agency with the primary mission of resource management to take fee title and manage the mitigation land. Evidence of satisfaction must include a copy of the contract with the agency, and a written statement from the agency that (1) the land contains the specified acreage and the specified habitat, or like functioning habitat, and (2) the land will be managed by the agency for conservation of natural resources in perpetuity.

DOCUMENTATION: The applicant shall purchase the off-site mitigation credits and provide the evidence to the [PDS, PCC] for review and approval. If the offsite mitigation is proposed to be owned or managed by DPR, the applicant must provide evidence to the [PDS PCC] that [DPR, GPM] agrees to this proposal. It is recommended that the applicant submit the mitigation proposal to the [PDS, PCC], for a pre-approval. If an RMP is submitted in-lieu of purchasing credits (option 1), then the RMP shall be prepared and an application for the RMP shall be submitted to the [PDS, ZONING].

TIMING: Prior to the approval of the map and prior to the approval of any plan and

issuance of any permit, the mitigation shall be completed. **MONITORING:** The [PDS, PCC] shall review the mitigation purchase for compliance with this condition. Upon request from the applicant [PDS, PCC] can preapprove the location and type of mitigation only. The credits shall be purchased before the requirement can be completed. If the applicant chooses option #2, then the [PDS, ZONING] shall accept an application for an RMP, and [PDS, PPD] shall review the RMP submittal for compliance with this condition and the RMP Guidelines.

BIO#4–OPEN SPACE SIGNAGE [PDS, FEE]

INTENT: In order to protect the proposed open space easement from entry, informational signs shall be installed. **DESCRIPTION OF REQUIREMENT:** Open space signs shall be placed along the biological open space boundary of lots(s) 23-36, and 45 as indicated on the approved Grading Plan the signs must be corrosion resistant, a minimum of 6” x 9” in size, on posts not less than three (3) feet in height from the ground surface, and must state the following:

Sensitive Environmental Resources Area Restricted by Easement

Entry without express written permission from the County of San Diego is prohibited. To report a violation or for more information about easement restrictions and exceptions contact the County of San Diego,
Planning & Development Services
Reference: (3100 5223, Env. Log. 3910-00-02-035)

DOCUMENTATION: The applicant shall install the signs as indicated above and provide site photos and a statement from a California Registered Engineer, or licensed surveyor that the open space signs have been installed at the boundary of the open space easement(s). **TIMING:** Prior to the approval of the map and prior to the approval of any plan and issuance of any permit, the open space signs shall be installed. **MONITORING:** The [PDS, PCC] shall review the photos and statement for compliance with this condition.

BIO#5–OPEN SPACE FENCING [PDS, FEE]

INTENT: In order to protect the proposed open space easement from entry, and disturbance, permanent fencing or walls shall be installed. **DESCRIPTION OF REQUIREMENT:** Open space fencing or walls shall be placed along the biological open space boundary as indicated on the Grading Plan. The fencing/walls design shall consist of split rail. **DOCUMENTATION:** The applicant shall install the fencing or walls as indicated above and provide site photos and a statement from a California Registered Engineer, or licensed surveyor that the open space fencing has been installed. **TIMING:** Prior to the approval of the map and prior to the approval of any plan and issuance of any permit, the fencing or walls shall be placed. **MONITORING:** The [PDS, PCC] shall review the photos and statement for compliance with this condition.

BIO#6–RESOURCE MANAGEMENT PLAN

INTENT: In order to provide for the long-term management of the proposed open space preserve, a Resource Management Plan (RMP) shall be prepared and implemented.

DESCRIPTION OF REQUIREMENT: Submit to and receive approval from the Director of PDS, a RMP. The RMP shall be for the perpetual management of 91.5 acre open space onsite. The RMP shall be consistent with the conceptual/draft RMP/HMP dated March 2014 on file with PDS as Environmental Review Number 00-02-035. The plan shall be prepared and approved pursuant to the most current version of the [County of San Diego Biological Report Format and Content Requirements](#). The final RMP cannot be approved until the following has been completed to the satisfaction of the Director of PDS and in cases where DPR has agreed to be the owner and/or manager, to the satisfaction of the Director of DPR.

- a. The plan shall be prepared and approved pursuant to the most current version of the [County of San Diego Biological Report Format and Content Requirements](#).
- b. The habitat land to be managed shall be completely purchased.
- c. The easements shall be dedicated to ensure that the land is protected in perpetuity.
- d. A Resource Manager shall be selected and evidence provided by applicant as to the acceptance of this responsibility by the proposed Resource Manager
- e. The RMP funding mechanism shall be identified and approved by the County to fund annual costs for basic stewardship.
- f. A contract between applicant and County shall be executed for the implementation of the RMP.

DOCUMENTATION: The applicant shall prepare the RMP and submit it to the [PDS, ZONING] and pay all applicable review fees. **TIMING:** Prior to the approval of the map and prior to the approval of any plan and issuance of any permit, the RMP shall be approved. **MONITORING:** The [PDS, PPD] shall review the RMP for compliance with the content guidelines, the conceptual RMP, and this condition.

BIO#7–WETLAND PERMITS: [PDS, FEE X2]

INTENT: In order to comply with the State and Federal Regulations for jurisdictional impacts as a result of improvements, the following agency permits, or verification that they are not required shall be obtained. **DESCRIPTION OF REQUIREMENT:** The following permit and agreement shall be obtained, or provide evidence from the respective resource agency satisfactory to the Director of PDS that such an agreement or permit is not required:

- a. A Clean Water Act, Section 401/404 permit issued by the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers for all project related disturbances of waters of the U.S. and/or associated wetlands.
- b. A Section 1602 Streambed Alteration Agreement issued by the California Department of Fish and Wildlife for all project related disturbances of any streambed.

DOCUMENTATION: The applicant shall consult each agency to determine if a permit or agreement is required. Upon completion of the agency review of this project, the applicant shall provide a copy of the permit(s)/agreement(s), or evidence from each

agency that such an agreement or permit is not required to the [PDS, PCC] for compliance. **TIMING:** Prior to the approval of the map and prior to the approval of any plan and issuance of any permit, the permits shall be obtained. **MONITORING:** The [PDS, PCC] shall review the permits/agreement for compliance with this condition. Copies of these permits should be transmitted to the [DPW, ESU], for implementation on the grading plans

BIO#8–BIOLOGICAL MONITORING [PDS, FEE X2]

INTENT: In order to prevent inadvertent disturbance to Least Bell's vireo and Southwestern Willow Flycatcher, all grading located 300 feet of Frey Creek shall be monitored by a biologist. **DESCRIPTION OF REQUIREMENT:** A County approved biologist shall be contracted to perform biological monitoring during all grading, clearing, grubbing, trenching, and construction activities adjacent to Frey Creek. The following shall be completed:

- a. The Biologist shall perform the monitoring duties before, during and after construction pursuant to the most current version of [the County of San Diego Biological Report Format and Requirement Guidelines](#) and this permit. The contract provided to the county shall include an agreement that this will be completed, and a [Memorandum of Understanding \(MOU\)](#) between the biological consulting company and the County of San Diego shall be executed. The contract shall include a cost estimate for the monitoring work and reporting.
- b. The cost of the monitoring shall be added to the grading bonds or bond separately.

DOCUMENTATION: The applicant shall provide a copy of the biological monitoring contract, cost estimate, and MOU to the [PDS, PCC]. Additionally, the cost amount of the monitoring work shall be added to the grading bond cost estimate. **TIMING:** Prior to the approval of any plan, issuance of any permit and prior to approval of the map, the requirement shall be completed. **MONITORING:** The [PDS, PCC] shall review the contract, MOU and cost estimate or separate bonds for compliance with this condition. The cost estimate should be forwarded to [PDS, LDR], for inclusion in the grading bond cost estimate, and grading bonds.

Draft Grading Plan Notes:

PRE-CONSTRUCTION MEETING: (Prior to Preconstruction Conference, and prior to any clearing, grubbing, trenching, grading, or any land disturbances.)

(BIOLOGICAL RESOURCES)

BIO#9–“TEMPORARY FENCING: [PDS, PCC] [DPW,PDCI] [PC] [PDS, FEE]. INTENT: In order to prevent inadvertent disturbance to onsite open space and adjacent areas containing native habitat, temporary construction fencing shall be installed. **DESCRIPTION OF REQUIREMENT:** Prior to the commencement of any grading and or clearing in association with this grading plan, temporary orange construction fencing shall be placed to protect from inadvertent disturbance of proposed onsite open space

and adjacent offsite native habitat. The placement of such fencing shall be approved by the PDS, Permit Compliance Section. Upon approval, the fencing shall remain in place until the conclusion of grading activities after which the fencing shall be removed. **DOCUMENTATION:** The applicant shall provide evidence that the fencing has been installed and have a California licensed surveyor certify that the fencing is located on the boundary of the open space easement(s). The applicant shall submit photos of the fencing along with the certification letter to the [PDS, PCC] for approval. **TIMING:** Prior to Preconstruction Conference, and prior to any clearing, grubbing, trenching, grading, or any land disturbances the fencing shall be installed, and shall remain for the duration of the grading and clearing. **MONITORING:** The [PDS, PCC] shall either attend the preconstruction conference and approve the installation of the temporary fencing, or review the certification and pictures provided by the applicant.”

BIO#10—“RESOURCE AVOIDANCE: [PDS, PCC] [DPW, PDCI] PDS, FEE X2].

INTENT: In order to avoid impacts to Least Bell’s vireo and Southwestern willow flycatcher, which are a sensitive biological resource pursuant to the Migratory Bird Treaty Act (MBTA), a Resource Avoidance Area (RAA), shall be implemented on all plans. **DESCRIPTION OF REQUIREMENT:** There shall be no brushing, clearing and/or grading such that none will be allowed within 500 feet of raptor nesting habitat during the breeding season of Least Bell’s vireo and Southwestern willow flycatcher within Resource Avoidance Area (RAA) as indicated on these plans. The breeding season is defined as occurring between March 15th and September 15th, and May 1st thru September 1st. The Director of Planning and Land Use [PDS, PCC] may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Wildlife, provided that no raptors are present in the vicinity of the brushing, clearing or grading. **DOCUMENTATION:** The applicant shall provide a letter of agreement with this condition; alternatively, the applicant may submit a written request for waiver of this condition. Although, No Grading shall occur within the RAA until concurrence is received from the County and the Wildlife Agencies. **TIMING:** Prior to preconstruction conference and prior to any clearing, grubbing, trenching, grading, or any land disturbances and throughout the duration of the grading and construction, compliance with this condition is mandatory unless the requirement is waived by the County upon receipt of concurrence from the Wildlife Agencies. **MONITORING:** The [DPW, PDCI] shall not allow any grading in the RAA during the specified dates, unless a concurrence from the [PDS, PCC] is received. The [PDS, PCC] shall review the concurrence letter.”

DURING CONTRUCTION: *(The following actions shall occur throughout the duration of the grading construction).*

(BIOLOGICAL RESOURCES)

BIO#11—BIOLOGICAL MONITORING [PDS, FEE X3]

INTENT: In order to prevent inadvertent disturbance to Least Bell’s vireo and Southwestern willow flycatcher , all grading located adjacent to Frey creek shall be monitored by a biological monitor. **DESCRIPTION OF REQUIREMENT:** A County approved biologist shall perform biological monitoring during all grading, clearing, grubbing, trenching, and construction activities. The Project Biologist shall supervise and monitor grading activities to ensure against damage to biological resources that are intended to be protected and preserved. The monitor(s) shall be on site during all

grading and clearing activities that are in or adjacent to any wetland or potential occupied habitat, Biological open space areas or sensitive habitats. If there are disturbances, the monitor must report them immediately to the [PDS PCC]. Additionally, the biologist shall perform the following duties:

1. Perform weekly inspection of fencing and erosion control measures (daily during rain events) near proposed preservation areas and report deficiencies immediately to the DPW Construction Inspector;
2. Perform periodically monitor the work area for excessive dust generation in compliance with the County grading ordinance and report deficiencies immediately to the DPW Construction Inspector;
3. Monitor construction lighting periodically to ensure lighting is the lowest illumination possible allowed for safety, selectively placed, shielded, and directed away from preserved habitat;
4. Monitor equipment maintenance, staging, and fuel dispensing areas to ensure there is no runoff to Waters of the US;
5. Monitor noise levels to ensure they are not in excess of 60 decibels during the breeding season of Least Bell's vireo and Southwestern willow flycatcher defined as April 15 and September 15;
6. Stop or divert all work when deficiencies require mediation and notify DPW Construction Inspector and [PDS PCC] within 24 hours; (8) produce periodic (monthly during grading) and final reports and submit to the Wildlife Agencies and the PDS (final report will release bond);
7. Confer with the Wildlife Agencies and [PDS PCC] within 24 hours any time protected habitat or Least Bell's vireo and Southwestern willow flycatcher are being affected by construction;
8. Attend construction meetings and other meetings as necessary.

DOCUMENTATION: The Project Biologist shall prepare and submit to the satisfaction the [PDS, PCC] monitoring reports, which indicate that the monitoring has occurred as indicated above. **TIMING:** The following actions shall occur throughout the duration of the grading construction. **MONITORING:** The [DPW, PDCI] shall assure that the Project Biologist is on-site performing the Monitoring duties of this condition during all applicable grading activities as determined by the Biologist. The [DPW, PDCI] shall contact the [PDS, PCC] if the Project Biologist or applicant fails to comply with this condition. The [PDS, PCC] shall review and approve the monitoring reports for compliance with this condition.

ROUGH GRADING: (Prior to rough grading approval and issuance of any building permit).

(BIOLOGICAL RESOURCES)

BIO#12–BIOLOGICAL MONITORING [PDS, FEE]

INTENT: In order to comply with the adopted Mitigation Monitoring and Reporting Program (MMRP) pursuant to the [County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements for Biological Resources](#), a Grading Monitoring Program shall be implemented. **DESCRIPTION OF REQUIREMENT:** The Project Biologist shall prepare and submit a final letter report

substantiating his/her supervision of the grading activities and substantiating that grading did not impact additional areas of Least Bell’s vireo and Southwestern willow flycatcher or other sensitive biological resources. The report shall conform to the [County of San Diego Report Format Guidelines for Biological Resources](#). It shall also include but not be limited to the following items:

- a. Photos of the temporary fencing that was installed during the trenching, grading, or clearing activities.
- b. Monitoring logs showing the date and time that the monitor was on site.
- c. Photos of the site after the grading and clearing activities.

DOCUMENTATION: The applicant shall submit the final biological monitoring report to the [PDS, PCC] for review and approval. **TIMING:** Upon completion of all grading activities, and prior to Rough Grading final Inspection ([Grading Ordinance SEC 87.421.a.2](#)), the final report shall be completed. **MONITORING:** The [PDS, PCC] shall review the final report for compliance with the project MMRP, and inform [DPW, PDCI] that the requirement is completed.

FINAL GRADING RELEASE: *(Prior to any occupancy, final grading release, or use of the premises in reliance of this permit).*

(BIOLOGICAL RESOURCES)

BIO#13–OPEN SPACE SIGNAGE & FENCING [PDS, FEE]

INTENT: In order to comply with Condition BIO# 4, 5 pursuant to the adopted Mitigation Monitoring and Reporting Program (MMRP) for TM5223, the fencing and signage shall be installed. **DESCRIPTION OF REQUIREMENT:** The permanent fences or walls, and open space signs shall be placed along the open space boundary of lots(s) 23-36, and 45 as shown on these plans and the approved Conceptual Grading and Development Plan.

- a. Evidence shall be site photos and a statement from a California Registered Engineer, or licensed surveyor that the permanent walls or fences, and open space signs have been installed.
- b. The signs must be corrosion resistant, a minimum of 6” x 9” in size, on posts not less than three (3) feet in height from the ground surface, and must state the following:

**Sensitive Environmental Resources
Area Restricted by Easement**

Entry without express written permission from the County of San Diego is prohibited. To report a violation or for more information about easement restrictions and exceptions contact the County of San Diego, Planning & Development Services
Reference: (3100 5223, Env. Log. 3910-00-02-035)

DOCUMENTATION: The applicant shall install the fencing and signage and provide the documentation photos and certification statement to the [PDS, PCC]. **TIMING:** Prior to the occupancy of any structure or prior to Final Grading Release ([Grading Ordinance Sec. 87.421.a.3](#)) the fencing and signage shall be installed. **MONITORING:** The [PDS, PCC] shall review the photos and statement for compliance with this condition.

BIO#14-EASEMENT AVOIDANCE [PDS, FEE]

INTENT: In order to protect sensitive resources, pursuant to [County Grading Ordinance Section 87.112](#) the open space easements shall be avoided. **DESCRIPTION OF REQUIREMENT:** The easement indicated on this plan is for the protection of native habitat within Frey creek that is a sensitive environmental resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. It is unlawful to grade or clear within an open space easement; any disturbance shall constitute a violation of the [County Grading Ordinance Section 87.112](#) and will result in enforcement action and restoration. **DOCUMENTATION:** The applicant shall provide a letter statement to the [PDS, PCC] stating that all Sensitive Resource Easements were avoided during the grading construction, and that no impacts or encroachment into the open space occurred. **TIMING:** Prior to Final Grading Release the letter verifying the easements were not disturbed shall be submitted. **MONITORING:** The [DPW, PDC] shall not allow any grading, clearing or encroachment into the open space easement.”

ENVIRONMENTAL FINDINGS:

A. CEQA Findings

TO BE PROVIDED

B. FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFW, November 1993):

Finding 1.a: The habitat loss does not exceed the five percent guideline.

The proposed project will impact 3.5 acres of coastal sage scrub and no pairs of California gnatcatcher (*Polioptia californica*). Approved coastal sage scrub losses as of the date of March 3, 2014 and including this approval, for the entire unincorporated County, outside the boundaries of the Multiple Species Conservation Program (MSCP), are presented in the following table:

Unincorporated Area Coastal Sage Scrub Cumulative Losses	
Total loss allowed under five percent guideline:	2953.30 acres
Cumulative loss of Coastal sage scrub to date:	1187.52 acres
Net loss due to this project:	3.5 acres
Total cumulative loss:	1191.02 acres
Remaining loss under five percent guideline:	1762.28 acres

Therefore, the habitat loss due to this project does not exceed the five percent guideline.

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

All the 3.5 acres of coastal sage scrub is of intermediate value as outlined by the flow chart in the NCCP Guidelines. The site is primarily orchards habitat (approximately 142.9 acres out of 249 acres) and also includes chamise chaparral, Diegan coastal sage scrub, southern sycamore-alder riparian woodland, southern coast live oak riparian forest, floodway, coast live oak woodland, open water, disturbed habitat, urban/developed, and field/pasture. The project will directly impact only 3.5 acres of the 50 acres of Diegan coastal sage scrub habitat onsite.

The loss of 3.5 acres of Diegan coastal sage scrub will not preclude connectivity between areas of high habitat values, because the majority of coastal sage scrub impacts on site are located in patches away from the adjacent to Frey Creek which is avoided and placed within biological open space. A total of 45.2 acres of CSS will be dedicated within biological open space or avoided. In addition, all areas onsite with high and very high habitat value are preserved onsite. A total of 94.2 acres are within Biological open space or agriculture open space and conditioned to be managed through a Resource Management Plan. Development is proposed within the moderate, low and agriculture designated lands. Any potential wildlife movement through the project site from a regional perspective will not be altered. For these reasons, the habitat loss associated with the project would have minimal impact on connectivity between high value areas located to the north and south along San Luis Rey River.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

The CSS habitat on-site is identified for conservation, as Pre Approved Mitigation Area (PAMA) land in the draft North County MSCP. Implementation of the Shadow Run Ranch project will not adversely affect the ongoing MSCP planning process. The project preserves the majority of natural and naturalized vegetation and concentrates development in an area that may generally be characterized as lower in biological quality within existing agriculture land and adjacent to the existing road. The project was redesigned in coordination with the wildlife agencies and County MSCP staff to ensure important biological resources are proposed to be dedicated in open space. All of the natural open space being provided within the project are within PAMA, and as such, provides a valuable contribution to the regional biological preserve that is currently being planned. The project will not preclude the development of a regional preserve system or block any known regional movement corridor or habitat linkage.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

Approximately 7% of the coastal sage scrub habitat on the project site would be impacted. The habitat is considered of "high to intermediate" value, pursuant to the NCCP Logic Flow Chart. The project has minimized impacts to the core area habitat with the greatest potential for connectivity to the north, south, and east. Besides the minimized project design and the large-block preserve design, the project proposes

measures to ensure that indirect impacts are minimized and that the preserve system will have long-term viability. As such, the loss of Diegan coastal sage scrub will be mitigated to the maximum extent practicable for high value habitat in accordance with Section 4.3 the NCCP Process Guidelines. The following mitigation measures have been incorporated into the project:

- Dedication of a Limited Building Zone easement in order to prevent construction of buildings that would require fire-clearing within the open space.
- Implementation of a long-term Resource Management Plan to ensure that the open space lots are maintained properly.
- Placement of restrictive signs between the access road and open space boundaries.
- Placement of temporary fencing during grading/clearing under the supervision of a biological monitor.
- Placement of permanent fencing between development areas and open space.
- Implementation of grading and clearing restrictions during non-breeding season months for California gnatcatcher and raptor species.
- Biological monitoring during grading, clearing and construction.

With all of the design elements and mitigation measures incorporated into the Shadow Run Ranch project, it has been found that the area proposed for habitat loss has been minimized and mitigated to the maximum extent practicable.

Finding 2 The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

Protocol surveys for the California gnatcatcher were performed in 2001, 2005 and 2009 with negative results. Twelve sensitive wildlife species and no sensitive plant species were detected onsite. There will be potential impacts to these sensitive species due to this project, but the site does not contain regionally viable populations. To mitigate for the loss of coastal sage scrub habitat due to the project, onsite preservation and avoidance in addition to offsite purchase of coast live oak woodland habitat will be required at a 3:1 ratio equivalent to no less than 2.1 acres. Offsite mitigation is also required for impacts to pasture at a ratio of 0.5:1. These offsite habitat purchases will preserve habitat with long-term viability that has connectivity to high value districts and potential to support listed species.

The majority of impacts to sensitive habitats will be mitigated through onsite mitigation. All onsite open space is within PAMA for the draft North County Multiple Species Conservation Program (MSCP). The only habitats that will require offsite mitigation are coast live oak woodland and pasture habitat. The project will be conditioned to obtain offsite mitigation within the Red Mountain mitigation bank. Through these mitigation measures, the proposed project will not appreciably reduce the likelihood of the survival and recovery of listed species.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

The project will require grading plans for site preparation for residential development. The issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Wildlife and U.S. Fish and Wildlife Service and approval by the County of San Diego of a Grading Permit, Clearing Permit, or Improvement Plan is required prior to the clearing of any coastal sage scrub supported on the project site. No state or federal permits other than those mentioned above are identified as being required at this time. Construction and/or land use modification will not commence until all appropriate permits have been issued. The project has been found to be in conformance with Section 86.104 of the San Diego County Code. As such, the anticipated loss will be incidental to “otherwise lawful activities”.

NCCP FLOWCHART

1. Is natural vegetation present? **Yes.**
2. Is Coastal sage scrub present? **Yes.**
3. Is Coastal sage scrub the most dense in the subregion? **No.**
4. Is the land close to high value district. **Yes.**
5. Is the land located in a corridor between higher value districts. **No.**
6. Does the land support high density of target species? **No.**

Based on the NCCP Logic Flow Chart, the quality of habitat supported on the Orchard Hills project is defined as being “Intermediate Value.”

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

Condition 1-7, 9, 10, 13, 14.

- Ongoing Mitigation

Compliance with the following conditions is assured because County staff will monitor the on-going requirements and, if necessary, pursue the remedies specified in the project permit, the security agreement, or the mitigation monitoring agreement:

Conditions 8, 11, and 12.

NOTICE: The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

NOTIFICATION TO APPLICANT: Because your project has an effect on native biological resources, State law requires the payment of a \$2,181.25 fee to the California Department of Fish and Wildlife for their review of the Mitigated Negative Declaration (Fish and Wildlife Code §711.4) and a \$50 administrative fee to the County (\$2,231.25 total). If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Planning & Development Services, within two (2) working days of the effective date of this approval (the "effective date" being the end of the appeal period, if applicable). **The payment must be by certified check or cashier's check payable to the "County of San Diego" and can be submitted to the cashier at the PDS office or directly to the County Clerk.** The fees (excluding the administrative fee) may be waived for projects that are found by the Planning & Development Services and the California Department of Fish and Wildlife to have a no effect impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Wildlife Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

NOTICE: This subject property is known to contain Coastal sage scrub plant community. Such plant community is habitat for the coastal California gnatcatcher. The Federal government recently listed the gnatcatcher as a threatened species under the Federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.). THE LISTING MAY RESULT IN AN APPLICANT'S INABILITY TO PROCEED WITH HIS/HER PROJECT WITHOUT A PERMIT FROM THE FEDERAL GOVERNMENT IF THE SPECIES OR ITS HABITAT ARE PRESENT ON THE PROJECT SITE. It is advisable to contact the United States Fish and Wildlife Service to determine the applicability of the prohibitions under the Act to each applicant's property.

NOTICE: The subject property contains wetlands, a lake, a stream, and/or waters of the U.S. which may be subject to regulation by State and/or federal agencies, including, but not limited to, the Regional Water Quality Control Board, U.S. Army Corps of Engineers and the California Department of Fish and Wildlife. It is the applicant's responsibility to consult with each agency to determine if a permit, agreement or other approval is required and to obtain all necessary permits, agreements or approvals before commencing any activity which could impact the wetlands, lake, stream, and/or waters of the U.S. on the subject property. The agency contact information is provided below.

U.S. Army Corps of Engineers: 6010 Hidden Valley Rd, Suite 105, Carlsbad, CA 92011-4219; (858) 674-5386; <http://www.usace.army.mil/>

Regional Water Quality Control Board: 9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340; (858) 467-2952; <http://www.waterboards.ca.gov/sandiego/>

California Department of Fish and Wildlife: 3883 Ruffin Rd., San Diego, CA 92123; (858) 467-4201; <http://www.dfg.ca.gov/>

DEFENSE OF LAWSUITS AND INDEMNITY: The applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers and employees to attack, set aside, void or annul this approval or any of the proceedings, acts or determinations taken, done or made prior to this approval; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense.

JUDICIAL REVIEW TIME LIMITATIONS: The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Planning & Development Services, 5510 Overland Avenue, Suite 110, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning & Development Services on TO BE DETERMINED. A copy of this decision, and the documentation supporting the decision, is on file in the Planning & Development Services office at 5510 Overland Avenue, Suite 110, San Diego, California.

PLANNING & DEVELOPMENT SERVICES
MARK WARDLAW, DIRECTOR

BY:

SAMI REAL, Chief
Project Planning Division

MW:SR:ag

Attachments

Habitat Loss Exhibit dated April 5, 2013
USGS Map
Biological Technical Report (Helix Environmental Planning, January 31, 2013)

cc: To be provided at issuance of Habitat Loss Permit

email cc:

Robert Hingtgen, Project Manager, Project Planning, Planning & Development Services
Ed Sinsay, Team Leader, Land Development, Planning & Development Services
Donna Beddow, Planning Manager, Project Planning, Planning & Development Services