



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.

TO BE DETERMINED

Hidden Canyon Project
4068 Crystal Court
Boulder, CO 80304

DRAFT Habitat Loss Permit

APPLICATION NUMBER: PDS2020-HLP-20-001, ER XX-XXX

ASSOCIATED PERMIT(S): PDS2016-LDGRMJ-30097

NAME OF APPLICANT: David Resnick

DESCRIPTION/LOCATION OF LOSS:

The proposed project is for a Habitat Loss Permit and will remove 8.72 acres of coastal sage scrub as shown on the attached Habitat Loss Exhibit dated January 2020. The proposed project is located east of the City of Encinitas, south of the City of San Marcos, and north of the community of Rancho Santa Fe (APN 223-081-50, 223-081-49, and 223-081-48). The project location is indicated on the attached USGS map. The proposed Habitat Loss Permit will allow removal of habitat for the proposed Hidden Canyon Project, which was part of the much larger 482-acre Cielo del Norte Project. This project includes the issuance of a grading permit for three existing legal lots encompassing 24.88 acres, and associated roadways.

Biological resources on the project site were evaluate in a Biological Resources Letter Report prepared by DUDEK (January 2020), which includes protocol-level surveys for coastal California gnatcatcher that were conducted over the entire project area in the spring of 2018. The project area contains 21.43 acres of Diegan coastal sage scrub, 2.89 acres of mafic southern mixed chaparral,

and 0.56 acres of disturbed habitat. One pair of coastal California gnatcatcher was observed during the 2018 surveys within the southeastern portion of the project area. The project will impact 8.72 acres of coastal sage scrub and the remaining 12.71 acres will be conserved within an open space easement. However, 0.88 acres of the on-site coastal sage scrub is considered impact neutral and will not be used as mitigation for project impacts. Therefore, onsite preservation of coastal sage scrub totals 11.85 acres. Other onsite habitat which contributes to the preservation of coastal California gnatcatcher habitat includes southern mixed chaparral. A total of 1.48 acres of mafic southern mixed chaparral will be included in the open space preservation onsite to mitigate for 1.40 acres of impacts to this community. Project mitigation will consist of the on-site preservation of coastal sage scrub and southern mixed chaparral.

A Habitat Loss Permit is intended to address the loss of occupied coastal sage scrub. The coastal sage scrub onsite is considered "Intermediate Value for Long-Term Conservation" according to the Southern California Coastal Sage Scrub Natural Communities Conservation Planning Process (NCCP) Guidelines Logic Flow Chart. The project area is within the draft North County Multiple Species Conservation Plan (NCMSCP) and the Pre-Approved Mitigation Area (PAMA). It is also connected to open space and existing preserves along the northern and western boundaries. Since the project area is adjacent to existing development associated with the water tank and residential development along the northern boundary and the residential development along the eastern boundary, impacts to wildlife corridors are not expected. Habitat connectivity into adjacent open space preserve areas would continue to occur after project implementation. Additionally, more than half of the Project Area will be conserved as an open space easement, which would allow for continued use through this area. Therefore, the Project conforms to the NCCP standards and guidelines.

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 sub regional 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 sub regional 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.

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 PDS2016-LDGRMJ-30097. 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.

A. Prior to use and reliance on this Habitat Loss Permit, the following conditions shall be met:

1. Obtain approval from the County of San Diego of a Grading Permit, Clearing Permit, or Improvement Plan that authorizes the clearing and/or grading of the area addressed by this Habitat Loss Permit.

ANY PERMIT: (Prior to the approval of any plan, issuance of any permit, and prior to occupancy or use of the premises in reliance of this permit).

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

INTENT: In order to protect sensitive biological resources, pursuant to the Guidelines for Determining Significance for Biological Resources, a biological open space easement shall be granted. **DESCRIPTION OF REQUIREMENT:** Grant to the County of San Diego, a biological open space easement, as shown on the approved plot 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:

- a. 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, (<http://www.sdcounty.ca.gov/PDS/docs/MemoofUnder.pdf>) between the wildlife agencies and the fire districts and any subsequent amendments thereto.
- b. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of PDS, DPW or DPR.

- c. Vegetation removal or application of chemicals for vector control purposes where expressly required by written order of the DEH.

DOCUMENTATION: 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 approval of any plan or issuance of any permit, and prior to use of the premises in reliance of this permit the easements shall be recorded. **MONITORING:** The *[DGS, RP]* shall prepare and approve the easement documents and send them to *[PDS, PCC]* for pre-approval. The *[PDS, PCC]* shall pre-approve the language and estimated location of the easements before they are released to the applicant for signature and subsequent recordation. Upon Recordation of the easements *[DGS, RP]* shall forward a copy of the recorded documents to *[PDS, PCC]* *[DPR, TC]* for satisfaction of the condition.

3. **BIO#2–LBZ EASEMENT [PDS, FEE X 2]**

INTENT: In order to protect sensitive biological resources, pursuant to the Guidelines for Determining Significance for Biological Resources, a Limited Building Zone 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 Limited Building Zone Easement as shown on the plot 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:

- a) Decking, fences, and similar facilities.
- b) 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 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 approval of any plan or issuance of any permit, and prior to use of the premises in reliance of this permit, the easements shall be recorded. **MONITORING:** The *[DGS, RP]* shall prepare and approve the easement documents and send them to *[PDS, PCC]* for pre-approval. The *[PDS, PCC]* shall pre-approve the language and estimated location of the easements before they are released to the applicant for signature and subsequent recordation. Upon recordation of the easements *[DGS, RP]* shall forward a copy of the recorded documents to *[PDS, PCC]* for satisfaction of the condition.

4. **BIO#3–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 as indicated on the approved plot plan for PDS2016-LDGRMJ-30097. 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: PDS2016-LDGRMJ-30097

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 approval of any plan or issuance of any permit, and prior to use of the premises in reliance of this permit, the open space signs shall be installed.

MONITORING: The [PDS, PCC] shall review the photos and statement for compliance with this condition.

5. **BIO#4-RESOURCE MANAGEMENT PLAN**

INTENT: In order to provide for the long-term management of the proposed open space preserve and for the perpetual management of Diegan coastal sage scrub and macific southern mixed chaparral, a Resource Management Plan (RMP) shall be prepared and implemented. **DESCRIPTION OF REQUIREMENT:** Submit to and receive approval from the Director of PDS, an RMP consistent with the conceptual RMP dated January 2020 on file with the as Environmental Review Number XXX. 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/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 ensuring 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 to fund annual costs for basic stewardship shall be identified and approved by the County.
- 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 approval of any plan or issuance of any permit, and prior to use of the premises in reliance of this permit the RMP shall be approved. **MONITORING:** The [PDS, PPD] [DPR, GPM] shall review the RMP for compliance with the content guidelines, the conceptual RMP, and this condition.

GRADING PERMIT: (Prior to approval of any grading and/or improvement plans and issuance of any Grading or Construction Permits).

6. BIO#5–BIOLOGICAL MONITORING [PDS, FEE X2]

INTENT: In order to prevent inadvertent disturbance to areas outside the limits of grading, all grading 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. 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 bonded separately with Planning & Development Services.

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 approval of any grading and/or improvement plans and issuance of any Grading or Construction Permits. **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. The [PDS, LDR] shall add the cost of the monitoring to the grading bond costs.

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

7. BIO#6–OPEN SPACE FENCING [PDS, FEE]

INTENT: In order to protect the proposed open space easement from entry, or disturbance, permanent fencing or walls shall be installed by the applicant. **DESCRIPTION OF REQUIREMENT:** Open space fencing or walls shall be placed along the biological open space boundary as indicated on the plot plan. The fencing/walls design shall consist of any material but glass or other transparent material. **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 at the open space easement boundary. **TIMING:** Prior to any occupancy, final grading release, or use of the premises in reliance of this permit, the fencing or walls shall be placed. **MONITORING:** The [PDS, PCC] shall review the photos and statement for compliance with this condition.

8. BIO#7–BIOLOGICAL MONITORING [PDS, FEE X2]

INTENT: In order to ensure that the biological monitoring occurred during the grading phase of the project, a final Biological Monitoring Report shall be prepared. **DESCRIPTION OF**

REQUIREMENT: The “Project Biologist” shall prepare final biological monitoring report. The report shall substantiate the supervision of the grading activities, and state that grading or construction activities did not impact any additional areas of sensitive biological resources. The report shall conform to the County of San Diego Report Format Guidelines for Biological Resources, and include 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 Biologist shall prepare the final report and submit it to the [PDS, PCC] for review and approval. **TIMING:** Prior to any occupancy, final grading release, or use of the premises in reliance of this permit, the final report shall be approved. **MONITORING:** The [PDS, PCC] shall review the final report for compliance this condition and the report format guidelines. Upon approval of the report, [PDS, PCC] shall inform [PDS, LDR] and [DPW, PDCI], that the requirement is complete and the bond amount can be relinquished. If the monitoring was bonded separately, then [PDS, PCC] shall inform [PDS, FISCAL] to release the bond back to the applicant.

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

9. **BIO#8–BIOLOGICAL MONITORING [PDS, FEE X3]**

INTENT: In order to prevent inadvertent disturbance to areas outside the limits of grading, all grading 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 also perform the following duties before construction to comply with the conditions of this Grading Plan:

- a) Supervise and verify placement of temporary fencing of open space easements. The placement of such fencing shall be approved by the [PDS, PCC].
- b) The Biologist shall attend the preconstruction meetings and other meetings to discuss construction requirements. Such meeting shall include the [PDS, PCC].

DOCUMENTATION: The Biological Monitor shall prepare written documentation that certifies that the temporary fencing has been installed and that all construction staff has been trained on the site sensitive biological resources that are to be avoided. **TIMING:** Prior to Preconstruction Conference, and prior to any clearing, grubbing, trenching, grading, or any land disturbances this condition shall be completed. **MONITORING:** The [DPW, PDCI] shall invite the [PDS, PCC] to the preconstruction conference to coordinate the Biological Monitoring requirements of this condition. The [PDS, PCC] shall attend the preconstruction conference and verify the installation of the temporary fencing and approve the training documentation prepared by the biologist.

10. **BIO#9–TEMPORARY FENCING [PDS, FEE]**

INTENT: In order to prevent inadvertent disturbance to Diegan coastal sage scrub and macific southern mixed chaparral, 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 all open space easements that do not allow grading, brushing or clearing. Temporary fencing is also required in all locations of the project where proposed grading or clearing is within 100 feet of an open space easement boundary. 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.”

11. **BIO#10–RESOURCE AVOIDANCE [PDS, FEE X2]**

INTENT: In order to avoid impacts to raptors and migratory birds, 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 during the breeding season of the raptor or migratory birds. The breeding season is defined as occurring between January 15th and August 31st. The Director of PDS [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 or migratory birds are present in the vicinity of the brushing, clearing or grading as demonstrated by a survey completed no more than 72 hours prior to proposed 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).

12. **BIO#11–BIOLOGICAL MONITORING [PDS, FEE X3]**

INTENT: In order to prevent inadvertent disturbance to areas outside the limits of grading, all grading 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 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:

- a) Prepare a California gnatcatcher-monitoring program to the satisfaction of [PDS PCC] and the Wildlife Agencies;
- b) 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;
- c) 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;
- d) Conduct training for contractors and construction personnel, including the purpose for resource protection, a description of the gnatcatcher and its habitat, and the conservation measures that should be implemented during project construction;
- e) Monitor construction lighting periodically to ensure lighting is the lowest illumination possible allowed for safety, selectively placed, shielded, and directed away from preserved habitat;
- f) Monitor equipment maintenance, staging, and fuel dispensing areas to ensure there is no runoff to Waters of the US;
- g) 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);
- h) Confer with the Wildlife Agencies and [PDS PCC] within 24 hours any time protected habitat or gnatcatchers are being affected by construction;
- i) 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).*

13. BIO#12–BIOLOGICAL MONITORING [PDS, FEE]

INTENT: In order to comply with the adopted Mitigation Monitoring and Reporting Program (MMRP) pursuant to PDS2016-LDGRMJ-30097, and 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 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).*

14. BIO#X-OPEN SPACE SIGNAGE & FENCING [PDS, FEE]

INTENT: In order to comply with Condition 3 and 6 pursuant to the adopted Mitigation Monitoring and Reporting Program (MMRP) for PDS2016-LDGRMJ-30097, 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 as shown on these plans and the approved Conceptual Grading and Development Plan for PDS2016-LDGRMJ-30097.

- 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: PDS2016-LDGRMJ-30097

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 use of the premises, and 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.

15. **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 sensitive environmental resources, including Diegan coastal sage scrub and macific southern mixed chaparral, 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. The only exception(s) to this prohibition are:
- a. 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, (<http://www.sdcountry.ca.gov/PDS/docs/MemoofUnder.pdf>) between the wildlife agencies and the fire districts and any subsequent amendments thereto.
 - b. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of PDS, DPW or DPR.
 - c. Vegetation removal or application of chemicals for vector control purposes where expressly required by written order of the DEH.

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

1. 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 8.72 acres of coastal sage scrub and one pair of California gnatcatcher (*Polioptila californica*). Approved coastal sage scrub losses as of the date of January 8th, 2019 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:	1,655.88 acres
Net loss due to this project:	8.72 acres
Total cumulative loss:	1,664.60 acres
Remaining loss under five percent guideline:	1,288.70 acres

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

The CSS present on-site is considered to be of “Intermediate Value for Long-Term Conservation” of coastal California gnatcatchers by the U.S. Fish and Wildlife Service (USFWS) and CDFW. The loss of coastal sage scrub associated with the construction of the Hidden Canyon Project would reduce, but not eliminate connectivity between adjacent areas of high habitat value. In order to support this statement the following items will be discussed: (1) the quality of the habitat on-site; (2) its relationship to regional open space; (3) the significance of the proposed project impacts; and (4) the feasibility of maintaining habitat connectivity given the proposed impacts.

1. In order to determine the quality of on-site habitat from a regional planning perspective, the following sources were consulted: Figure 3-1, Habitat Evaluation Model for California gnatcatcher, in the draft NCMSCP (County of San Diego 2009)¹ and the Evaluation Logic Flow Chart presented in the NCCP *Conservation Guidelines*. According to Figure 3-1 in the draft NCMSCP Habitat Evaluation Model, the Project Area contains “Very High” value coastal sage scrub. The NCCP Conservation Guidelines recommend the use of the flow diagram to make the determination of habitat

value. Following the flow diagram, habitat may be defined as "higher potential value for long-term conservation," "intermediate potential value for long-term conservation," or "lower potential value for long-term conservation."

The following discussion represents the results of the evaluation of coastal sage scrub within the Project Area. Question 1 of the flow chart asks if natural vegetation is present. The answer is yes; there is natural vegetation within the area of proposed development. Question 2 asks if coastal sage scrub is present. The answer is yes. Question 3 asks if the habitat in question is the most dense coastal sage scrub in the subregion. The answer is no, while it is a large block of undisturbed coastal sage scrub, it is not the most dense in the subregion. The Project Area occurs adjacent to an existing development along its northern and eastern boundaries. Question 4 asks is the land close to Higher Value District? The answer is yes; the coastal sage scrub to the west of the Project Area is within an existing draft NCMSCP Preserve and historically contains a larger concentration of coastal California gnatcatchers. The coastal sage scrub within the Project Area exhibits a much lower density of gnatcatchers than coastal sage scrub in the vicinity. The 1994 biological assessment of the Olivenhain Water Storage Project identified large numbers of California gnatcatchers in CSS within one mile of the project site. The main difference in the habitat between these areas is the greater presence southern mixed chaparral species at Hidden Canyon.

Since more than half of the Project Area will be conserved as an open space easement, this will allow for a continuation of use by coastal California gnatcatchers. Therefore, while this site is rated as "very high" habitat value in the draft NCMSCP, the coastal sage scrub is rated as intermediate potential value for long-term conservation under NCCP Guidelines.

2. The project site's relationship to regional open space is important for the coastal California gnatcatcher and habitat connectivity between southeastern Carlsbad and the Lake Hodges area. However, since the Project Area is adjacent to existing development, connectivity has already been restricted along the northern and eastern boundaries. Habitat connectivity into adjacent open space preserve areas along the western and southern boundaries of the Project Area would continue to occur after project implementation. Additionally, more than half of the Project Area (53%) will be conserved as an open space easement, which would allow for continued use through this area. Therefore, of the proposed impacts of 8.72 acres of coastal sage scrub resulting from the proposed Hidden Canyon Project will not preclude connectivity between areas of high habitat value.
3. The significance of the proposed project impacts to 10.12 acres of natural habitat is based upon the site's connection with adjacent off-site open space forming a regional linkage area. Despite the ranking of habitat on-site, discussed above, impacts to habitat are offset by preservation of intermediate quality habitat with a configuration which maintains habitat connectivity, provides resources to support sensitive plants and wildlife and identifies a limitation on vegetation clearing during the breeding season. Indirect impacts have been minimized through the placement of on-site open space within open space easements, incorporation of adequate fire fuel modification buffers, limitations on timing of construction to avoid avian breeding season, and implementation

of a Habitat Management Plan by a habitat management agency acceptable to the satisfaction of the Director of Planning and Land Use.

Based on the most recent 2018 protocol survey of the Project Area impacts to coastal sage scrub occupied by one pair of coastal California gnatcatchers include the direct loss of 7.48 acres of habitat as well as 1.24 acres of selective thinning of habitat (8.72 acres). Mitigation for these impacts includes the on-site preservation of 11.85 acres of coastal sage scrub included in a conservation easement and long-term management by the Escondido Creek Conservancy (TECC).

The preservation value of the on-site coastal sage scrub is enhanced by the associated preservation of 1.48 acres of southern mixed chaparral habitat on-site. Both plant communities exist in an interdigitated and ecotonal fashion on-site and, as such, function to provide live-in and dispersal habitat for sensitive plant and wildlife species on-site, including the coastal California gnatcatcher.

The density of gnatcatchers in coastal sage scrub in the Project Area is markedly lower than that seen in coastal sage scrub present on lands to the north, south and west. This likely is due to the fact that coastal sage scrub within the Project Area is not dominated by flat-topped buckwheat and California sagebrush, but rather represents a community that can, perhaps, be more accurately classified as coastal sage scrub-chaparral scrub. The vegetation within the Project Area is dominated by black sage, California sagebrush, and southern mixed chaparral species such as chamise, and wart-stemmed ceanothus.

The preservation of southern mixed chaparral, however, also contributes to the maintenance of a regionally important dispersal corridor between lands conserved at Lake Hodges as part of the MSCP, lands proposed for conservation as part of draft NCMSCP, and lands conserved as part of the 1995 Fieldstone-La Costa HCP. Although the Project Area is located within PAMA-designated lands, the draft NCMSCP assumes that a portion of the upland habitat within the PAMA will be utilized for development (County of San Diego 2009). Therefore, Project implementation would not conflict with the draft NCMSCP or preclude it from being implemented. Impacts to sensitive lands will be mitigated through on-site preservation providing an equal or greater benefit to coastal California gnatcatcher; therefore, implementation of the Proposed Project would not conflict with the Resource Protection Ordinance (County of San Diego 2012). Additionally, since the development within the Project Area is situated adjacent to existing development, the Project would not preclude connectivity between areas of high habitat values, as defined by the Southern California Coastal Sage Scrub Natural Communities Conservation Planning Process (NCCP) Guidelines.

With the proposed design, and the preservation of on-site habitat, which contributes significantly to regional connectivity, significant impacts to coastal sage scrub and coastal California gnatcatchers would be reduced to a level which is less than significant.

4. The feasibility of maintaining habitat connectivity given the proposed impacts is excellent, as the Project development would be adjacent to existing development and the on-site preserve would be connected to the off-site open space to the west, north

and south. This would allow for a contiguous block of biological conservation easement areas comprised of coastal sage scrub and southern mixed chaparral.

In terms of regional planning efforts to maintain connectivity through this region, the proposed development would not constrain those efforts. There would be no impacts to wildlife corridors with Project implementation due to the presence of the existing adjacent development, which already poses a constraint. The Project Area does not include any forested habitats or large drainages, which provide cover for larger wildlife species. Therefore, only live-in habitat for smaller wildlife species is provided within the Project Area. Significant portions (53%) of habitat would be preserved within the Project Area. Therefore, the on-site preserve could help achieve the goal of maintaining existing connectivity between preserved areas in eastern Carlsbad with the Lake Hodges area.

Given the extent of on-site open space (13.33 acres, 53%), the maintenance of connectivity within the region through placement of the proposed Project adjacent to existing development, and avoidance of impacts to wildlife corridors, the proposed project design meets the requirements of 4(d) Finding 1b by preserving the ability to provide connectivity between areas of high habitat value despite project impacts.

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

The proposed development would not preclude or prevent preparation of a sub regional NCCP because the proposed impacts do not affect large populations of target resources and the development would not preclude connectivity as stated above.

The following sensitive/target resources would be directly impacted by implementation of the proposed Project:

- 8.72 acres of coastal sage scrub, which supports one pair of coastal California gnatcatchers.
- 1.40 acre of southern mixed chaparral.
- 5.67 acres of wart-stemmed ceanothus (*Ceanothus verrucosus*) containing approximately 343 individuals.
- 26 individuals of golden-rayed pentachaeta (*Pentachaeta aurea* ssp. *aurea*)
- 0.47 acre of ashy spike-moss (*Selaginella cinerascens*)
- Direct loss or reduction in habitat value of 10.12 acres of suitable habitat, including foraging habitat, for sensitive wildlife species.

The acreage of coastal sage scrub proposed for take would be mitigated through on-site preservation, with good preserve design allowing for a contiguous block of on-site open space connected to off-site open space. This preserve would be managed by TECC. In addition, indirect impacts will be minimized through restricting vegetation clearing to outside of the avian breeding season.

Impacts to other sensitive habitats (i.e., southern mixed chaparral) are considered to be adequately mitigated through on-site preservation and do not represent critical localities for these resources in terms of preserve design. Likewise, impacts to sensitive plants and animals, including NCCP target species such as the California gnatcatcher, would not reduce

regionally important populations of these species. It is likely, given the configuration and extent of on-site open space, and timing of the vegetation clearing, that these populations would persist within preserved habitat on-site.

Both short- and long-term indirect impacts to sensitive vegetation communities and special-status plant and wildlife species are considered significant but are adequately mitigated through implementation of the following measures: a biological monitor (M-BI-1), temporary construction fencing (M-BI-2), Best Management Practices/Storm Water Pollution Prevention Plan (M-BI-5), and implementation of a Resource Management Plan (RMP) by a habitat management agency acceptable to the satisfaction of the Director of Planning and Land Use (M-BI-3). Project impacts would not significantly reduce any sensitive/target species. Therefore, the project will not preclude or prevent the preparation of the sub regional NCCP, including the North County MSCP.

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.

The Project has been designed to avoid and/or minimize impacts to sensitive biological resources to the furthest extent possible. Project refinements, such as reduction to in building pads and placement of development areas adjacent to existing development, have been made to avoid and reduce impacts to sensitive resources. Impacts to jurisdictional resources will be avoided under the current project design.

Specific mitigation measures are incorporated in the project in order to ensure minimization of impacts to coastal sage scrub and target sensitive species. These mitigation measures include restriction from clearing during the coastal California gnatcatcher breeding season (February 15 through August 31) (M-BI-4), on-site preservation of 11.85 acres of coastal sage scrub (M-BI-3), on-site preservation of 1.48 acres of southern mixed chaparral habitat (M-BI-3), and a biological open space easement (M-BI-3). These measures will help ensure that target species may disperse from the impact area to the preserve area and will be able to sustain populations within the on-site and adjacent off-site open space. Therefore, the long-term goal of habitat preservation of sustaining target species populations is facilitated by the project avoidance, minimization and mitigation measures, and the 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.

A single listed species occurs on-site; one pair of the federally listed threatened coastal California gnatcatcher. The proposed project would directly impact 8.72 acres of coastal sage scrub. In order to mitigate these losses, the project applicant proposes to restrict the clearing of coastal sage scrub vegetation during the breeding season, preserve 11.85 acres of coastal sage scrub and 1.48 acres of southern mixed chaparral habitat on-site.

Mitigation measures will help ensure that no nests are disturbed by the construction, and that substantial open space is preserved that maintains regional connectivity, which in turns ensures long-term survivability of the species. The habitat to be preserved on-site supports sensitive species to the same degree as coastal sage scrub within the impact area. In addition, the proposed on-site preserve lands are situated such that regional connectivity is preserved,

providing connections with off-site open space. The on-site will be preserved through a biological open space easement. Therefore, the habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

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

The project will require a grading permit for the construction of three single family homes. 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? **Yes.**
6. Does the land support high density of target species? **No.**

Based on the NCCP Logic Flow Chart, the quality of habitat supported on Hidden Canyon 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:

A.1 – A.15

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 (or proof of prior payment) of a \$2,354.75 (2019 fees) 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 (\$2,404.75 total). To comply with State law, the applicant must file the NOD and remit applicable fees within five (5) working days of the date of the project approval. Payment or sufficient proof of prior payment to the County Clerk is required at the time of filing. Payment may be made with cash or by check/money order made payable to the "San Diego Recorder/Clerk". American Express, Discover, MasterCard, and Visa Debit card payments are also accepted at County Administration Center with a \$2.50 surcharge per transaction, and must be submitted to the Clerk at the time of filing the NOD.

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:

DARIN NEUFELD, Chief
Project Planning Division

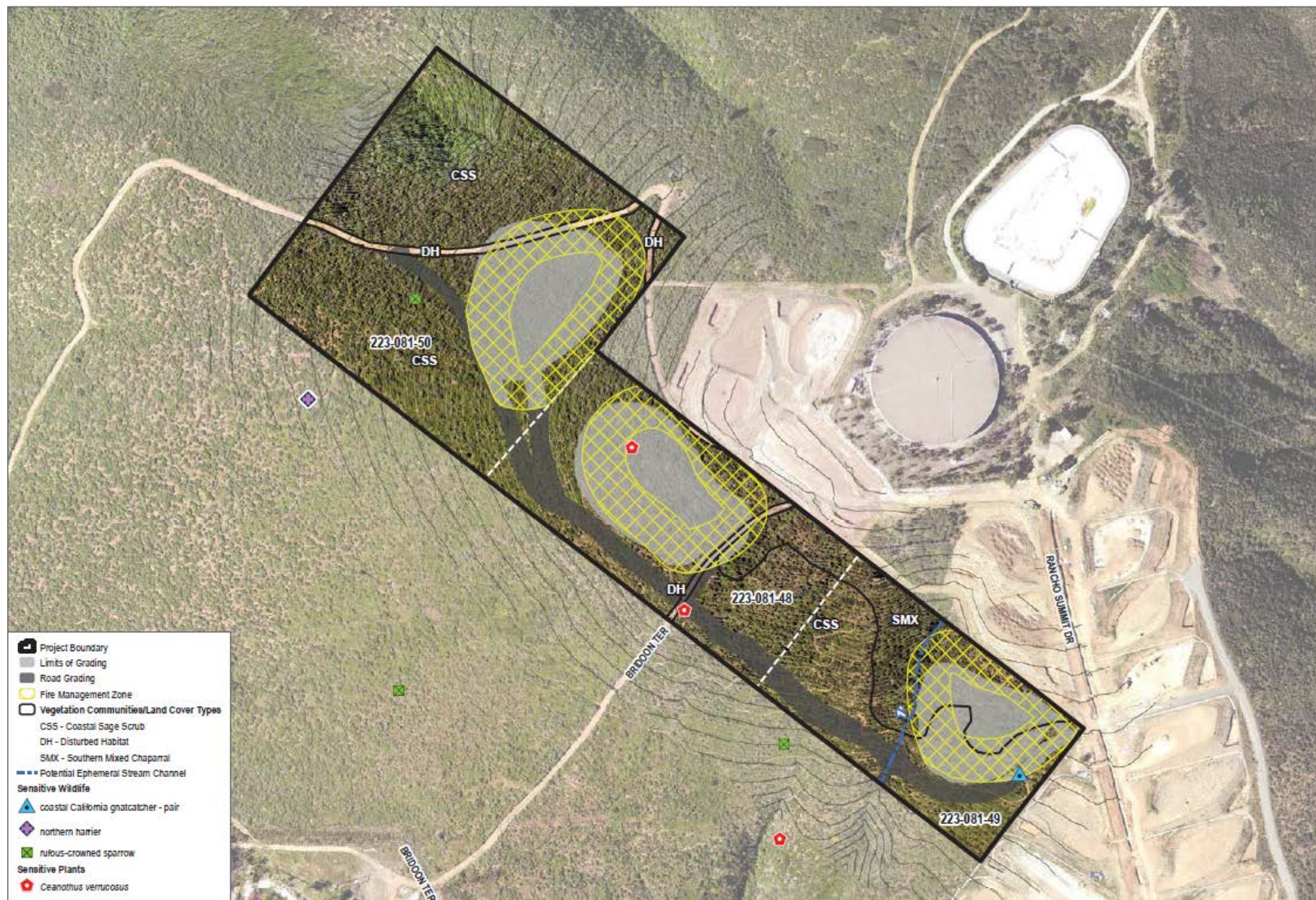
Attachments

Habitat Loss Exhibit dated January 2020
USGS Map
Biology Report prepared by DUDEK (January 2020)

cc: To be provided at issuance of Habitat Loss Permit

Habitat Loss Exhibit

January 2020



USGS Map

