

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
HERMOSA BEACH, CALIFORNIA, APPROVING AN  
ADDENDUM TO THE ENVIRONMENTAL IMPACT REPORT  
AND THE AMENDMENT TO PRECISE DEVELOPMENT  
PLAN/PLANNED DEVELOPMENT PERMIT NO. 01-10, ALL IN  
CONJUNCTION WITH THE PROPOSED DEVELOPMENT OF  
A SUBMARINE FIBER OPTIC CABLE SYSTEM**

**The City Council of the City of Hermosa Beach does hereby Find, Order, and  
Resolve as follows:**

**SECTION 1.** On May 13, 2002, Tyco Networks (US) Inc. (the “Applicant”) filed a complete application for an amendment to the approved Precise Development Plan/Planned Development Permit, PDP No. 10-01, to modify the method of installation for a portion of the Applicant’s proposed submarine fiber optic cable system to be located on city owned property (the “Project”).

**SECTION 2.** The amendment to the approved submarine fiber optic cable project involves the option of using a Horizontal Direction Drilling (HDD) approach for a portion of the installation of the two submarine fiber optic cables at a landing site on Second Street, within the existing city public rights-of-way, under the City beach, in the marine waters within the City’s jurisdiction, and beyond the City’s jurisdictional boundaries, as permitted through the approved PDP No. 01-10 and the approved easement agreement between the City and the Applicant to use city owned property.

**SECTION 3.** Pursuant to the State California Environmental Quality Act (CEQA) Guidelines and based upon the information contained in the Initial Study, a decision was made to prepare an Environmental Impact Report (“EIR”) for the original project, PDP No. 10-01. A Notice of Preparation of a Draft Environmental Impact Report (“DEIR”) was prepared for PDP No. 10-01 and sent to the State Clearinghouse in the Office of Planning and Research for the State of California (SCH No. 2001 061111) and to other responsible, trustee, and/or interested agencies and persons. The City contracted with an independent consultant for the preparation of the EIR for PDP No. 10-01.

**SECTION 4.** The Final EIR (FEIR) for PDP No. 10-01 was comprised of the DEIR, the Mitigation Monitoring Program (MMP), the list of persons, organizations and public agencies which commented on the DEIR, the comments which were received by the City regarding the DEIR, and the City's written responses to significant environmental points raised in the review and consultation process.

**SECTION 5.** The Final EIR for PDP No. 10-01 was reviewed by the Planning Commission in November of 2001 and was certified by the City Council of the City of Hermosa Beach, acting as the final decision-making body for the lead agency, on December 18, 2001.

**SECTION 6.** Pursuant to California Environmental Quality Act Guidelines Section 15164, a decision was made to prepare an Addendum to the EIR for the amendment to the approved PDP No. 10-01 to allow for the HDD option. On the basis of the information in the Addendum and supplemental review, there is no substantial evidence that the work associated with the amendment to PDP No. 10-01 may or will have a significant impact on the environment. None of the conditions described in Section 15162 of the CEQA Guidelines calling for preparation of a subsequent EIR or negative declaration have occurred for this amendment to the project as currently proposed. There are no substantial changes in the project or new information that would result in identification of new significant environmental effects or a substantial increase in the severity of significant effects beyond those previously identified. The City Council has reviewed and considered the information contained in the Addendum to the EIR and considered the comments received during the public review process.

**SECTION 7.** The City Council finds, pursuant to CEQA Guidelines, the City has independently analyzed the Addendum to the EIR and that the Addendum to the EIR represents the independent judgment of the City as lead agency with respect to the Project.

**SECTION 8.** The findings made in this Resolution are based upon the information and evidence set forth in the Addendum to the EIR and upon other substantial evidence which has been presented in the record of this proceeding. The documents, staff report, plans, specifications, and other materials that constitute the record of proceedings on which this Resolution is based and the Addendum to the EIR for the amendment to PDP No. 10-01 are on file and available for public examination during normal business hours in the Office of the Community Development Director of the City of Hermosa Beach, 1315 Valley Drive, Hermosa Beach, California 90254. The custodian of said records is the Community Development Director of the City of Hermosa Beach.

**SECTION 9.** The City Council finds that any comments regarding the Addendum to the EIR and all responses to those comments have been received by the City, that the City Council has received public testimony regarding the adequacy of the Addendum to the EIR, and that the City Council, as the final decision-making body for the lead agency, has reviewed and considered all such documents, including the Final EIR and Addendum and testimony prior to acting on the Project.

**SECTION 10.** Based upon the Initial Study, the Addendum to the EIR, public and agency comments and the record before the City Council, the City Council finds that the Project will not cause significant environmental impacts in the areas of Agricultural Resources, Biological Resources, Cultural Resources, Geology/Soils, Hazards and Hazardous Materials, Hydrology/Water Quality, Mineral Resources, Land Use/Planning, Population/Housing, Public Services, Recreation and Utilities/Service Systems. Explanations for why the foregoing impacts were found to be insignificant are contained in the Certified EIR and the Addendum to the EIR.

**SECTION 11.** Based upon the analysis presented in the Addendum to the EIR, and upon public and agency comments and the record before the City Council, the City Council finds that the Project will not cause or increase significant environmental impacts in the following areas beyond those originally identified as “potentially significant” in the

Initial Study in Appendix A of the DEIR for the original PDP No. 10-01 relating to Aesthetics, Air Quality, Noise, and Transportation/Traffic, as summarized below and further detailed in the Addendum to the EIR:

**a. Aesthetics:** The proposed project including the option of the utilizing the HDD method of installation for a portion of the cable, will not have a negative aesthetic effect on views from the Strand, the beach and surrounding public areas. Implementation of the proposed change would result in temporary aesthetic impacts on beach users at the Second Street beach access, and on certain Second Street residents and businesses. The impact on beach users themselves would be less under the proposed change to use the HDD approach rather than under the direct burial landing approach (due to avoidance of trenching of cable on the beach), but the impact on residents around the drill site would be greater. Installation of a required sound wall would prevent direct observation of drilling, which would further reduce the aesthetic impacts. The HDD approach is not expected to result in any new significant aesthetic impacts or substantially increase any previously significant aesthetic impacts. No new or different aesthetic impacts would occur with implementation of the proposed change. Following installation of the fiber optic cable system, there is be no above ground facilities visible from view. As a result, the aesthetic impacts are temporary and are reduced to level of insignificance. Further explanation for these determinations may be found in the Addendum to the EIR.

**b. Air Quality:** The California Coastal Act requires that new development shall be consistent with the requirements imposed by an air pollution control district or the State Air Resources Control Board. Impacts of the project on air quality are expected to be similar to those described for other cable projects. With implementation of the proposed Best Management Practices (BMP's), in particular BMP A-3 (offset credits), the air quality impact of the project with HDD approach would be the same as that of the project with direct burial landing approach, and thus would not result in any new significant impacts to air quality or any substantial

increase in previously identified air quality impacts. The Applicant will be required to comply with all of the requirements previously imposed upon the project; therefore, the project is consistent with policies regarding protection of the rules and requirements of the local air district as required by Section 30253(3) of the California Coastal Act. A Statement of Overriding Considerations was required as part of the approval of the original PDP because the daily air quality thresholds would be exceeded, even with mitigation. This issue is further discussed in the certified EIR and the Addendum to the EIR.

**c. Noise:** There will be noise generated during the short-term construction of the terrestrial and marine activities. Although the HDD drilling operations will result in elevated noise levels in and around the staging area at Second Street, noise levels will only be elevated during the daytime hours and will be temporary. This impact is therefore considered less than significant. Mitigation measures and conditions of approval have been imposed in the certified EIR and recommended in the Addendum to further reduce the short-term noise impacts during installation of the cable system. Restricting the hours of construction to 7 a.m. to 8 p.m., Monday through Friday, for construction should reduce the impacts to adjacent residential uses. In addition, conditions are recommended in the EIR and Addendum to implement operational constraints such as providing sound walls and enclosures for attenuation of noise impacts and use of state of the art mufflers. This sound wall would also prevent direct observation of drilling, which would further reduce the noise impacts. Notification prior to start of construction by the Applicant to residents will also be required. Given the adopted mitigation measures from the Final EIR, Best Management Practices and Conditions of Approval agreed to by the Applicant, impacts from noise will be less than significant. This issue is further discussed in the Addendum to the EIR.

**d. Transportation:** Transportation impacts will be considered significant if the project:

- Causes an increase in traffic that is substantial in relation to the existing a

traffic load and capacity of the street system;

- Exceeds, either individually or cumulatively, LOS standards;
- Results in inadequate emergency access;
- Results in inadequate parking capacity;
- Disrupts or delays or creates hazards to marine traffic.

Under the proposed change, Second Street from Hermosa Avenue to Beach Street would be closed to local traffic for approximately six weeks. Six public parking spaces would be occupied during this time for drilling operations. These impacts are construction related and short term. The applicant is preparing a traffic plan to safely divert traffic around the bore-site staging area, and arranging for alternative parking for the affected public parking spaces. Pedestrian access will be maintained during construction. Additionally, Mitigation Measures T-1 through T-7, as described in the certified EIR, would be implemented as part of the proposed change to further reduce significant transportation impacts associated with construction activities. Furthermore, proposed drilling would occur outside of the peak summer season. No new or different marine transportation impacts would occur with implementation of the proposed change. Implementation of the HDD approach as proposed, combined with appropriate mitigation measures from the previously adopted MMP, would not create any new significant transportation impacts nor substantially increase any previously identified transportation impacts. This issue is further discussed in the Addendum to the EIR.

**SECTION 12.** Based upon the certified EIR, the Addendum to the EIR, public comments and the record before the City Council, the City Council finds that the Project would not result in identification of new significant environmental effects or a substantial increase in the severity of significant effects beyond those previously identified in the areas of Air Quality, Aesthetics, Noise and Transportation/Traffic. Furthermore, no new information of substantial importance has become available which would show any criteria set forth in CEQA Guidelines 15162(a) (3).

**SECTION 13.** In response to each category identified in the Addendum to the EIR, and listed in Section 12 of this Resolution, no changes or alterations to the Mitigation Measures are required to avoid or substantially lessen the significant environmental impacts beyond those previously identified.

**SECTION 14.** Pursuant to Section 65402 of the Government Code, Restriction on the Acquisition and Disposal of Real Property, the City shall not lease any real property until the location, purpose and extent of such disposition has been submitted to and reported upon by the Planning Commission as to the conformity of the lease with the adopted General Plan or part thereof. The Planning Commission has determined that the City find that the project, as amended, and the approved easement agreement for the Applicant's use of the City owned property, are in conformance with the goals of the General Plan that call for:

- The protection of public recreation areas, in that compensation, via the lease agreement, will be provided to the City to offset the temporary loss of the use of the beach and will used to enhance access to and improvements for the beach. Using the HDD approach will not diminish the amount of public open space and natural resources available to the City. With full mitigation and the recommended conditions of approval, he project is considered consistent with the Open Element of the City's General Plan.
- The Land Use Element seeks to minimize conflicts between nonresidential land uses and residential properties, in that the Land Use Element does allow appropriate private interests to lease public facilities and properties. The fiber optic cables will be buried below the beach and marine waters using the HDD approach, and buried in the street or greenbelt and therefore, will not create any adverse aesthetic or land use impacts, and following installation, will not create any noise, light, vibration or smell.
- The prohibition of commercial development in open space areas that would adversely affect public use and the natural environmental benefits, in that this fiber optic cable project is underground and also considered a public facility, public utility/structure, are underground and a public corridor under the FCC and not a commercial development.

- Preserving and enhancing the environment and the natural resources, including the ocean and City beaches, in that the fiber optic cables will be buried below the beach and marine waters using the HDD approach, and buried in the street or greenbelt, therefore the presence of these fiber optic cables will not be in conflict with the goals of the General Plan and Zoning Ordinance relating to preserving open space or protecting the beach and ocean as a natural resource.
- Reducing and minimizing the various sources of noise, in that the City has restricted the hours of construction to 7 a.m. to 8 p.m., Monday through Friday for construction and imposed conditions to implement operational constraints such as construction of a sound barrier around the staging area, enclosing the diesel engines and using state of the art mufflers on the equipment.
- Minimizing the intrusion of traffic and parking into the residential areas, in that traffic and parking control plan is required from the Applicant to be reviewed and approved by the City prior to construction. The traffic and parking control plan includes ensuring emergency access is maintained, that residents and businesses are to be provided advance notification of construction or parking that may be temporarily displaced, requirements for off-site staging areas of equipment, and hours of work in the rights of way to be approved by the City.
- Maintaining bike paths and pedestrian ways, in that all bike and pedestrian ways will be maintained during construction and any temporary detours required are safe and convenient.

**SECTION 15.** The Planning Commission held a duly noticed public hearing on May 21, 2002 recommending that the City Council approve the Addendum to the EIR and the amendment to PDP 10-01 to allow a Horizontal Direction Drilling (HDD) alternative for a portion of the submarine fiber optic cable system, subject to conditions.

**SECTION 16.** The City Council held a duly noticed public hearing on June 11, 2002 to approve the Addendum to the EIR and approves the amendment to PDP 10-01 to allow a Horizontal Direction Drilling (HDD) alternative for a portion of the submarine fiber optic cable system. Having heard and considered all oral and written testimony,



including staff reports, the Final EIR and Addendum and all relevant evidence and argument, the City Council hereby finds as follows:

- A. The fiber optic cable project will be located on city owned property and within the public right-of-way.
- B. The beach segment of the proposed Project is consistent with the General Plan designations for “OS” (Open Space) and the remaining segments are within public right-of-way or the ocean and thus have no General Plan designation.
- C. As conditioned, the fiber optic cable project will conform to all applicable zoning regulations.
- D. The approved terms of the easement are for a period of twenty-five years and cover the installation, maintenance, operation and retirement of the fiber optic cable project. The City would receive compensation for the use of city property. The City will direct those funds to beach-related public improvements. These revenues would be used to offset the City’s current costs to maintain the beach, storm drains and the pier. It will also allow the City to have funds to upgrade the three beach bathrooms, plus construct one new bathroom near the pier. The easement will also cover the Applicant’s obligation to fund City inspection costs during construction.
- E. The proposed project, as amended and the approved easement for the Applicant’s use of the City owned property, are in conformance with the goals of the General Plan.
- F. The proposed Project is consistent with the goals and objectives of the Draft Local Coastal Plan, in that the amendments to the Land Use Plan in the Draft Local Coastal Program (LCP) address three main categories: parking and access, coastal recreation access, and coastal development and design. As proposed and mitigated, the project would be consistent with the City’s Draft LCP.
- G. The HDD method will eliminate any possibility of the cables becoming exposed on the beach and in nearshore waters due to a significant storm event or beach erosion and will avoid the need to stage on the beach itself, which better addresses the City Council’s initial concerns of possible exposure with the direct burial method of installation.

H. The City Council has independently reviewed the Addendum to the Environmental Impact Report and the Mitigation Monitoring Program in conformance with the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines (Title 14, California Code of Regulations Section 15000 et seq.) through the adoption of this Resolution, which Resolution is incorporated herein by this reference and attached hereto as Exhibit “A.”

**SECTION 17.** On December 18, 2001, the City Council adopted Resolution No.01-6181 entitled “A Resolution of the City Council of the City of Hermosa Beach, California Certifying the Final Environmental Impact Report for the TyCom Submarine Fiber Optic Cable Project; Adopting a Mitigation Monitoring Program; Adopting the Findings and Facts in Support of Findings as Required by the California Environmental Quality Act and Adopting a Statement of Overriding Considerations Relating to Air Quality.” The City Council finds that the findings set forth in that Resolution apply to the EIR as amended by the Addendum and apply to the project, as amended by the addition of the HDD method of installation. Resolution No No.01-6181 and each of the findings set forth in that Resolution are hereby incorporated by reference as set forth fully herein.

**SECTION 18.** Based Upon the Foregoing Findings, the City Council hereby:

- 1) Approves the Addendum to the Environmental Impact Report and the Mitigation Monitoring Program and Best Management Practices for the Amendment to PDP No. 10-01.
- 2) Approves the Amendment to Precise Development Plan/Planned Development Permit No. 01-10, submitted on May 13, 2002, subject to the following conditions and the mitigation measures summarized below, and which are further detailed in the certified EIR and approved PDP, the Addendum to the Environmental Impact Report for the Amendment to PDP No. 10-01 and the Mitigation Monitoring Program and Best Management Practices attached hereto and incorporated within as Exhibit No. 1, to allow the use of the horizontal direction drilling method for the beach segment at a single landing site at Second Street.

**Conditions of Approval for Amended PDP No. 01-10:**

1. All applicable Conditions of Approval imposed as part of City Council Resolutions Numbers 01-6181 and 01-6182 shall remain in full force and effect with the following revisions to the approved conditions and Mitigation Monitoring Program as outlined in **bold** below:

**Amended Condition A.1.** Continuing use of the Project shall conform to the applicable submitted plans and the Mitigation Monitoring Program reviewed and approved by the City Council for a single landing site at 2nd Street **on December 18, 2001**, utilizing direct burial method **as more fully detailed in the Certified EIR, or the option of horizontal directional drilling (HDD) as shown and more fully described in the amended PDP application and Addendum to the EIR for installation of the fiber optic cable system as approved by the City Council on June 11, 2002.** The hours of operation for HDD portion of the project are as follows:

- 7:00 a.m.:** Workers may enter the staging area and begin set-up, but no equipment may operate until after 8 a.m.
- 8:00 a.m.:** Heavy equipment, engines, etc. may begin operation.
- 7:00 p.m.:** All heavy equipment, engines, etc. must cease operations.
- 8:00 p.m.:** The staging area must be shut down and all workers must have exited the construction site.

The Director of Public Works may further restrict the approved workday hours for the HDD operation, in the event the noise generated from the HDD operation creates a legitimate material adverse impact on the surrounding properties as a result of noise that is in excess of the noise anticipated by the City approved noise study, Mitigation Measures, Conditions of Approval, Best Management Practices and/or additional noise reduction measures as proposed by the applicant and approved by the City for the project. The requirement that the grounding beds on the beach be located a minimum of 100 feet from the nearest

property line. The Second Street alignment shall be as shown in the **Certified EIR and/or the Addendum to the EIR, depending on the method of cable installation to be used.** The Greenbelt between Second Street and Herondo Street shall be part of this alignment and shall be used temporarily for the operation of construction equipment to bore across Herondo Street. The beach manhole shall be relocated on project plans so as not to interfere with existing residential parking west of Beach Drive. The final plans shall be subject to review by the Directors of Public Works and Community Development.

**Amended Condition B5.** Ninety days before taking the marine cables out of service or expiration of the submerged land lease or permits with Hermosa Beach, the Applicant will apply for amendments to all applicable marine permits to retire, abandon, or remove the cable. The cable system and all associated improvements shall be removed from the beach manhole out past the end of the pier and to a water depth level of seven meters below mean lower low water level for those portions of the system installed using the direct burial approach. **For those portions of the project installed utilizing the HDD method, applicable marine permits to retire, abandon, or remove the cable shall be obtained and implemented, as determined feasible by the City and Coastal Commission.**

**Amended Condition B9.** In the event the Applicant uses the direct burial method of installation for any portion of the cable system, the Applicant shall submit a plan to the City of Hermosa Beach Community Development Director and Public Works Directors for the City and the CCC's approval showing how the Applicant will ensure that the cable stays buried in the shoreline area such that it won't impact beach users. In the event the cable becomes exposed, the Applicant shall initiate actions to rebury the cable in a manner and time frame approved by the Director of Public Works. The Applicant shall be responsible for achieving an initial burial depth of at least three meters on the beach, 2 meters in the surf zone and 1 meter beyond the surf zone. The Applicant shall be responsible for achieving a reburial depth of 1.6 meters

on the beach and 1.6 meters in the surf zone and one meter beyond the surf zone. The reburial requirement will be triggered when the cable becomes exposed or is within .5 meters of the surface on the beach or in the surf zone. In addition, the Applicant shall maintain adequate slack in the cable pay out of the manhole during the initial installation, in the event the cable later becomes exposed on the beach, along the shoreline or out a distance comparable to the end of the pier and reburial of the cable is required. The City, at its discretion, shall have the ability to require the Applicant to again bury the cable at its initial burial depth at the lowest sand migration period of the year to ensure future exposure of the cable is minimized. Prior to such reburial, a reburial plan shall be submitted to the City for review and approval and the Applicant shall obtain all required applicable permits.

**Amended Condition E1. In the event the Applicant uses the direct burial method of installation for any portion of the cable system,** if the intertidal beach work occurs in March through August, a biologist will monitor the beach within 30 meters (98 feet) of each cable landing site on the third or fourth night following a full moon or new moon and one to five hours after high-tide within the two weeks before installation. If a spawning event occurs during the two weeks before construction activities, additional monitoring would be conducted during the next high-tide cycle to determine if a new spawn has occurred. Beach construction activities will be limited to a time period that will avoid impacts to spawning, incubation, and hatching. Monitoring will occur based on the CDFG's predicted grunion spawning run schedule (see [www.dfg.ca.gov/mrd/](http://www.dfg.ca.gov/mrd/)). A qualified biologist will determine the day on which the construction can begin again after a spawning event.

**Amended Condition H2. In the event the Applicant uses the direct burial method of installation for any portion of the cable system,** the Applicant has agreed to conduct standard archaeological monitoring for all soil-disturbing activities north of Fifth Street in Hermosa Beach, in a manner approved by the Director of Community Development. Standard archaeological monitoring procedures will require that a qualified archaeologist oversee all subsurface intrusions. The archaeologist will

record and inspect any prehistoric or historic archaeological materials that may be encountered. In areas where the archaeological monitor determines deposits to be disturbed, or culturally sterile, this process will be abandoned. Standard archaeological recording procedures will be followed, and in the event of unanticipated discoveries, a salvage plan will be developed according to the findings and consultation with a qualified third-part archaeologist, Native American monitors, and the City of Hermosa Beach. If human remains are discovered, the Applicant will follow the procedures described in CR-1.

**Amended Condition M8. In the event the Applicant uses the direct burial method of installation for any portion of the cable system,** the applicant shall ensure that there will be no time lapse between the establishment of temporary lifeguard towers and the displacement of the original lifeguard towers at Second Street.

**Amended Condition N2. and 114:** The Applicant shall coordinate in the preparation of a Construction Operation Plan and Program **to address either the use of direct burial as approved by the City Council on December 18, 2001, or as approved by the City Council on June 11, 2002 for the use of HDD.** Said plan shall be reviewed and approved prior to the issuance of construction permits by the Director of Public Works. The Construction Operation Plan and Program shall incorporate the following:

- Specifications for fencing of the site and construction staging areas evaluated to ensure maximum screening of views to site and aesthetic concerns.
- Limitations on construction activities by date and hour.
- A scaled plan that depicts pedestrian circulation routes and demonstrates the maintenance of safe and open access to the beach, The Strand, and the greenbelt during project construction.
- **Posting of signage at the staging and construction areas identifying limitations on construction activities by date and hour and phone numbers**

**the public may contact in the event of concerns and/or complaints for the following:**

- \* Applicant's on-site Project Superintendent (24 hour accessible phone number)**
- \* City's Project Manager**
- \* Department of Public Works**
- \* City Fire Department**
- \* City Police Department**
- \* County Lifeguards**

**2. New Condition: The noise attenuation barrier walls shall be used to completely surround the drill site with minimum wall height of no less than 8 feet and as high as necessary to adequately attenuate the sound as required by the City. The length, height, and location of the noise attenuation barrier walls shall be adequate to ensure proper acoustical performance and shall be approved by the Director of Public Works. The final noise attenuation wall height shall be determined by acoustical study prepared by the applicant in conjunction with the wall design for the project and reviewed and approved by the Director of Public Works prior to commencement of operations.**

**3. New Condition: That the barrier wall material should consist of fiberglass-filled acoustical curtains or panels with a Sound Transmission Class (STC) rating of at least 27 (STC-27) and they be designed to preclude structural failure due to such factors as winds, shear, shallow soil failure, earthquakes, and erosion as approved by the City's Public Works Director prior to commencement of operations.**

**4. New Condition: A diesel engine acoustical enclosure consisting of a metal framed, fiberglass-filled panels or other acceptable design be required for the drill rig, and any compressor and pumps, with all other internal combustion equipment using noise shrouds no less effective than those originally installed on**

**the equipment. Design noise reduction shall be no less than 18 dBA measured at equipment height from locations to be selected outside of the noise attenuation barrier walls. All other internal combustion equipment shall use noise shrouds no less effective than those originally installed on the equipment. The final design of the enclosure shall be determined by acoustical study prepared by the applicant for the project and reviewed and approved by the Director of Public Works prior to commencement of operations.**

- 5. New Condition: High performance mufflers are used on all diesel engines in regular use on the drill site and the use of air impact wrenches or similar equipment used on drill pipe flange bolts conform to all noise abatement requirements. Truck engines are excluded, but shall not have unmuffled exhaust.**
- 6. New Condition: With the exception of drilling operations, no heavy equipment is operated outside of those approved hours and operations specified by the City Council approval on June 11, 2002.**
- 7. New Condition: No equipment setup, tear down, or initial drilling start-up operations may occur outside of those approved hours and operations specified by the City Council approval on June 11, 2002.**
- 8. New Condition: No trucks involved in materials removal or delivery shall access the site outside of those approved hours and operations specified by the City Council approval on June 11, 2002.**
- 9. New Condition: All internal combustion equipment shall be properly tuned-up to minimize noise emissions.**
- 10. New Condition: The applicant shall be responsible for reimbursing the City all City-related costs associated with the implementation, monitoring, reporting and**



**follow-up required in the Mitigation Monitoring Program as provided for in the Memorandum of Understanding between the City and the applicant.**

11. An acceptance of conditions form shall be executed by the Applicant and submitted to the Community Development Department prior to issuance of construction permits.
12. This grant shall not be effective for any purposes until the Applicant has filed at the office of the Planning Division of the Community Development Department their affidavits stating that they are aware of, and agree to accept, all of the conditions of this grant.
13. The amendment to the PDP and this Resolution shall be recorded, and proof of recordation shall be submitted to the Community Development Department.
14. Each of the above conditions is separately enforced, and if one of the conditions of approval is found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.
15. The Applicant shall defend with Counsel of the City's choosing, indemnify, and hold harmless the City, its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this permit approval or any other proceeding or action taken pursuant to this permit. The City shall promptly notify the Applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense.
16. The Applicant shall reimburse the City for any court and attorney's fees, which the City may be required to pay as a result of any claim or action brought against the City because of this grant.

17. The Project shall be developed, maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance or other regulation applicable to any development or activity on the subject property. Failure of the Applicant to cease any development or activity not in full compliance shall be a violation of these conditions.

18. Pursuant to Code of Civil Procedure Section 1094.6, any legal challenge to the decision of the City Council must be brought within 90 days after the final decision by the City Council.

**SECTION 19.** The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 11th day of June 2002.

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**President** of the City Council and **Mayor** of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

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City Clerk

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City Attorney

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