

RESOLUTION NUMBER R-290280

ADOPTED ON JUNE 16, 1998

WHEREAS, Eastgate Acres, LLC, Owner/Permittee, filed an application with Development Services for a Planned Industrial Development and Resource Protection Ordinance Permit to develop 200,000 square feet for scientific research use in three buildings on a 34-acre site located at the northern terminus of Towne Centre Drive, in the University Community Plan area, in the R-1-5000 (proposed SR) Zone; and

WHEREAS, on April 30, 1998, the Planning Commission of The City of San Diego considered Planned Industrial Development/Resource Protection Ordinance Permit No. 96-7756, and voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on June 16, 1998, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Planned Industrial Development/Resource Protection Ordinance Permit No. 96-7756:

PLANNED INDUSTRIAL DEVELOPMENT PERMIT FINDINGS:

- A. **The proposed use will fulfill an individual and/or community need and will not adversely affect the general plan or the community plan.**

The Project Site is designated in the University Community Plan for Scientific Research uses, and is therefore consistent with the long range goals of the community plan. The project would promote a number of important objectives identified in the Progress Guide and General Plan and the University Community Plan, including emphasizing the city-wide importance of and encouraging the location of scientific research uses in the North

University area because of its proximity to the University of California at San Diego (UCSD).

- B. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area and will not adversely affect other property in the vicinity.**

Conditions have been added to the permits and map to minimize potential impacts to the Community to the extent feasible and to avoid impacts that would be materially detrimental to the health, safety, and general welfare of persons residing or working in the area. The Mitigation, Monitoring and Reporting program for this project minimizes all impacts to sensitive lands and maximizes the amount of preserved acreage on-site enabling the City to enlarge the Multi-Habitat Planning Area. Implementation of the proposed uses would result in the development of scientific research uses which are compatible with existing and planned development in the immediate vicinity.

- C. The proposed use will comply with the relevant regulations of the San Diego Municipal Code.**

The proposed development has been sited, designed, and conditioned to comply with all of the development regulations of the proposed SR (Scientific Research) zone, and is consistent with the intent and regulations of the Planned Industrial Development and Resource Protection Overlay zone.

RESOURCE PROTECTION ORDINANCE PERMIT FINDINGS:

- A. The proposed development will not adversely affect the applicable land use plan.**

The Project Site is designated in the University Community Plan for Scientific Research uses, and is consistent with the long range goals of the community plan. The project would promote a number of important objectives identified in the University Community Plan, including emphasizing the city-wide importance of and encouraging the location of scientific research uses in the North University area because of its proximity to the University of California at San Diego (UCSD).

- B. The proposed development will not be detrimental to the public health, safety and welfare.**

Conditions have been added to the permits and map to minimize potential impacts to the Community to the extent feasible and to avoid impacts that would be materially detrimental to the health, safety, and general welfare of persons residing or working in the area. The Mitigation, Monitoring and Reporting program for this project minimizes all impacts to sensitive lands and maximizes the amount of preserved acreage on-site enabling the City to enlarge the Multi-Habitat Planning Area. Implementation of the proposed uses

would result in the development of scientific research uses which is compatible with existing and planned development in the immediate vicinity.

C. The proposed development will comply with the applicable regulations of the San Diego Municipal Code.

The proposed project to develop scientific research uses is in conformance with the proposed underlying SR (Scientific Research) zoning, including all development regulations of that zone. In addition, development of the project will be governed through a number of regulatory documents including the Planned Industrial Development Permit, Resource Protection Ordinance Permit, and Vesting Tentative Parcel Map. These documents, together with the conditions contained therein, conform with all applicable regulations of the City of San Diego Municipal Code.

D. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to sensitive biological resources.

The Eastgate Acres project site contains 34-acres. In order to minimize adverse impacts, development is proposed for only 9.8 acres, and 24.2 acres would be established as an open space lot. The undeveloped 24.2 acres would be placed in permanent open space within the Multi-Habitat Planning Area (MHPA). In order to avoid grading of sensitive and steep slopes, the Eastgate Acres project has been clustered on the flatter portion of the site adjacent to Towne Centre Drive.

To ensure that site development would avoid significant environmental impacts, a Mitigation, Monitoring and Reporting Program is included as a requirement of this project. The level of mitigation and preservation proposed by the Eastgate Acres project would more than offset encroachment into sensitive lands. In addition, the open space dedication would result in an extraordinary benefit to the general public because approximately 11.2-acres of the site's open space were formerly planned for development under the University Community Plan.

E. The proposed development will be sited and designed to prevent adverse impacts on any adjacent sensitive biological resources.

The Eastgate Acres project site sits on a mesa top with an adjacent canyon and open space area mapped within the MHPA. The project has been sited and designed to prevent significant impacts on environmentally sensitive lands and resources. The Eastgate Acres project has been designed such that it is preserving more habitat for endangered species and natural landforms on-site that the University Community Plan requires.

F. The proposed development will be consistent with The City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.

The proposed project includes an adjustment to the boundary of the MHPA on-site. The City of San Diego MSCP Subarea Plan permits adjustments to the MHPA boundaries in cases where it can be shown that the adjusted MHPA will have equal or greater biological value. The proposed adjustment includes subtraction of a small area within the current MHPA and addition of a larger area that is currently outside the MHPA.

The proposed adjustment would result in a net gain of 1.4-acres of chaparral and 11.1-acres of coastal sage scrub within the MHPA. The quality of the additional habitat is equal to the habitat within the current MHPA on-site. The boundary adjustment would result in no loss of habitat value or function within the MHPA. The coastal California gnatcatcher would benefit by the adjustment because of the additional acreage of occupied coastal sage scrub. In addition, a small stand of San Diego barrel cactus would be within the added habitat.

G. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

The applicant has agreed to mitigation measures as conditions of the permits which are intended to avoid any significant impacts to archaeological, cultural or biological resources on the property. These measures include a Mitigation, Monitoring and Reporting Program that requires that a qualified archaeologist and paleontologist be present during brush removal, and the initial stages of cutting and grading of the project area.

In terms of biological resources, the Mitigation, Monitoring and Reporting program contains a host of requirements that include mitigation, protection and management of all sensitive resources. In addition, in order to reduce the total amount of grading and to minimize impacts to sensitive resources, the project clusters development on the flatter portions of the site adjacent to the existing Towne Center Drive.

The Eastgate Acres project site contains 34 acres of undeveloped land. However, only 9.8 acres (29 percent) of the property is proposed to be developed. The remaining 24.2 acres of the project site will be preserved as permanent open space within the City's Multi-Habitat Planning Area (MHPA).

RESOURCE PROTECTION ORDINANCE - ALTERNATIVE COMPLIANCE FINDINGS

THE DECISION MAKER MAY GRANT ALTERNATIVE COMPLIANCE TO ENSURE THE PROVISION OF EXTRAORDINARY BENEFIT TO THE GENERAL PUBLIC ON MAKING FINDINGS OF OVERRIDING SOCIAL AND ECONOMIC CONSIDERATIONS IN ADDITION TO THE FOLLOWING FINDINGS.

A. There are no feasible measures that further minimize the potential adverse effects on environmentally sensitive lands while still providing the extraordinary benefit.

The project has incorporated all feasible measures to minimize environmental impacts to sensitive lands. These measures include, but are not limited to, the use of retaining walls to minimize site grading and utilizing only approximately 10 acres of the 34-acre site, even though the University Community Plan would allow more than twice as much acreage to be developed. Any further reduction in development area would eliminate required parking and onsite amenities and make the project infeasible.

The level of mitigation and preservation proposed by the Eastgate Acres project would more than offset the increased encroachment into RPO sensitive lands. In addition, the open space dedication would result in an extraordinary benefit to the general public because approximately 11.2 acres of the site's open space were formerly planned for development under the University Community Plan. The 11.2-acre open space contains more than 3.1 acres of sensitive biological resources and steep slopes; if the site were developed in accordance with the University Community Plan, those resources would have been disturbed. Therefore, despite the minor encroachment into RPO sensitive lands, the Eastgate Acres project offers an extraordinary benefit to the City as it is preserving more habitat for endangered species and natural landforms on site than was anticipated in the University Community Plan.

B. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan.

The proposed project is consistent with the City of San Diego's Progress Guide and General Plan and will promote a number of important objectives identified within that document. Specifically, the project will expand the employment base for Scientific Research uses in the North University area by approximately 200,000 square feet and 9.8 acres. By adding this, the project will further make San Diego more competitive in the Scientific Research arena and take advantage of its proximity to the University of California at San Diego (UCSD). The project is providing extraordinary benefits by contributing 24.2 acres to the City's MHPA. This contribution is expanding the MHPA boundary by 14 acres beyond that shown on the adopted Community Plan.

C. The proposed development conforms to the adopted community plan for the area.

The project conforms with the University Community Plan which designates the site for Scientific Research uses. The proposed 9.8 acre development area conforms with the Community Plan as does the 24.2 acre MHPA open space designation. By providing Scientific Research job opportunities, the project helps implement the Community Plan goals of encouraging scientific research uses in proximity to UCSD. The project will also be providing an extraordinary benefit by contributing 24.2 acres to the MHPA.

RESOURCE PROTECTION ORDINANCE - DEVIATIONS FROM SENSITIVE BIOLOGICAL RESOURCES REGULATIONS

DEVIATIONS FROM THE REGULATIONS OF THIS SECTION MAY BE GRANTED ONLY IF THE DECISION MAKER MAKES THE FOLLOWING FINDINGS:

- 1. There are no feasible measures that can further minimize the potential adverse effects on sensitive biological resources.**

The project has incorporated all feasible measures to minimize environmental impacts to sensitive lands. These measures include, but are not limited to, the use of retaining walls to minimize site grading and utilizing only approximately 10 acres of the 34-acre site, even though the University Community Plan would allow more than twice as much acreage to be developed. Any further reduction in development area would eliminate required parking and onsite amenities and make the project infeasible.

The level of mitigation and preservation proposed by the Eastgate Acres project would more than offset the increased encroachment into RPO sensitive lands. In addition, the open space dedication would result in an extraordinary benefit to the general public because approximately 11.2 acres of the site's open space were formerly planned for development under the University Community Plan. The 11.2-acre open space contains more than 3.1 acres of sensitive biological resources and steep slopes; if the site were developed in accordance with the University Community Plan, those resources would have been disturbed. Therefore, despite the minor encroachment into RPO sensitive lands, the Eastgate Acres project offers an extraordinary benefit to the City as it is preserving more habitat for endangered species and natural landforms on site than was anticipated in the University Community Plan

- 2. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land not of the applicant's making.**


The proposed 9.8 acres of development grading is less than half that shown as permitted development area in the University Community Plan. The deviation requested is the minimum necessary to allow the construction of a feasible project. By concentrating the development area along Towne Centre Drive, the project minimizes impacts to steep slopes and biological resources and allows maximum contribution of the site to MHPA open space.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Planned Industrial Development/Resource Protection Ordinance Permit

No. 96-7756 is hereby granted to Eastgate Acres, LLC, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

RAD:lc
08/24/98
Or.Dept:Clerk
R-98-1583
Form=permitr.frm

**RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES**

**AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PLANNED INDUSTRIAL DEVELOPMENT/RESOURCE PROTECTION ORDINANCE
PERMIT NUMBER 96-7756
EASTGATE ACRES
CITY COUNCIL**

This Permit is granted by the Council of The City of San Diego to EASTGATE ACRES, LLC, Owner and Permittee, pursuant to Section 101.0920 and 101.0462 of the Municipal Code of The City of San Diego. The 34-acre site is located at the northern terminus of Towne Centre Drive in the SR zone within the University Community Planning area. The project site is legally described as Lot B of Referee's Partition Map of Pueblo Lot 1320.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to develop 200,000 square feet of scientific research space described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated June 16, 1998, on file in the Office of Development Services. The facility shall include:

- a. Three separate buildings consisting of 200,000 square feet of scientific research space;
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Off-street parking facilities; and
- d. Employee amenities may include pedestrian pathways, volleyball and/or basketball courts, picnic areas, etc.
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the Permit to Development Services; and
- b. The Permit is recorded in the office of the San Diego County Recorder.

3. Unless this permit has been revoked by The City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.

4. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.

6. Issuance of this permit by The City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.)

7. In accordance with authorization granted to The City of San Diego from the United States Fish and Wildlife Service (USFWS) pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game (CDFG) pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program (MSCP), The City of San Diego through the issuance of this permit hereby confers upon permittee the status of Third Party Beneficiary as provided for in Section 17 of The City of San Diego Implementing Agreement (IA), executed on July 16, 1997 and

on File in the Office of the City Clerk as Document No. 00-18394. Third Party Beneficiary status is conferred upon permittee by the City: (1) to grant permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by The City of San Diego pursuant to this permit shall be altered in the future by The City of San Diego, USFWS or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this permit and of full satisfaction by permittee of mitigation obligations required by this permit, as described in accordance with Section 17.1D of the IA.

8. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated June 16, 1998, on file in the Office of Development Services. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying

applicable processing fees, to bring a request for a new Permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

11. Rezoning of the subject property shall become effective with recordation of the corresponding final subdivision map for the project site.

12. All projects shall be in compliance with the Topographical Survey Requirements of the Municipal Code and all building plans shall be predicated upon said concurrently submitted topographical survey. Said topographical survey (and accompanying grading plan) shall accurately depict both pre-existing grade and finished grade as set forth in the City Municipal Code.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

Cultural Resources

13. Prior to the issuance of any grading permits, the applicant shall provide verification that a qualified archaeologist and/or archaeological monitor has been retained to implement the archaeological monitoring program. This verification shall be in the form of a letter from the applicant to the Environmental Review Manager of the Environmental Analysis Section of Development Services. A qualified archaeologist is defined as an individual certified by the Society of Professional Archaeologists (SOPA). At least 200 hours of field experience required for certification must have been obtained in southern California. Uncertified individuals who believe they meet the requirements for certification may submit evidence of their qualifications to Development Services. An archaeological monitor is defined as an individual who has expertise in the collection and salvage of cultural resources and who is working under the direction of a qualified archaeologist. **ALL PERSONS INVOLVED IN THE ARCHAEOLOGICAL MONITORING MUST BE APPROVED BY THE ENVIRONMENTAL ANALYSIS SECTION STAFF PRIOR TO THE PRECONSTRUCTION MEETINGS FOR THE MONITORING PROGRAM.**

14. The qualified archaeologist shall attend any preconstruction meetings to discuss grading plans with the grading and excavation contractor. The requirement for archaeological monitoring shall be noted on the grading plans.

15. The qualified archaeologist or archaeological monitor shall be present on-site during construction activity involving brush removal and the initial stages of grading to inspect for in-situ sites.

16. In the event that cultural resources are discovered, the archaeologist shall have the authority to divert, direct or temporarily halt grading activities in the area of discovery to allow evaluation of potentially significant archaeological resources. **AT THE TIME OF DISCOVERY, THE ARCHAEOLOGIST SHALL IMMEDIATELY NOTIFY THE ENVIRONMENTAL ANALYSIS SECTION STAFF OF SUCH FINDING.** The significance of the discovered resource shall be determined by the archaeologist, in consultation with Environmental Analysis Section. Environmental Analysis Section must concur with the evaluation procedures to be performed before construction activities are allowed to resume. For significant cultural resources, a Research Design and Data Recovery Program shall be prepared and carried out to mitigate impacts. Any human bones of Native American origin shall be turned over to the appropriate Native American group for reburial.

17. All collected cultural remains shall be cleaned, cataloged and permanently curated with an appropriate institution. All artifacts shall be analyzed to identify function and chronology as they relate to the history of the area. Faunal material shall be identified as to species, and specialty studies shall be completed as appropriate.

18. Prior to the issuance of building permits, in the event resources are discovered, a monitoring report, with appropriate graphics, which describes the results, analysis, and conclusions of the above program shall be prepared and submitted for approval by the Environmental Review Manager of the Environmental Analysis Section. Also, any sites or features encountered shall be recorded with the South Coastal Information Center at San Diego State University and at the San Diego Museum of Man.

Paleontological Resources

19. Prior to issuance of any grading permits, the applicant shall provide verification that a qualified paleontologist and/or paleontological monitor have been retained to implement the monitoring program. Verification shall be in the form of a letter from the applicant to the Environmental Review Manager of the Environmental Analysis Section of Development Services. A qualified paleontologist is defined as an individual with a PhD or MS degree in paleontology or geology and who is a recognized expert in the application of paleontological procedures and techniques such as screen washing of materials and identification of fossil deposits. A paleontological monitor is defined as an individual who has experience in the collection and salvage of fossil materials and who is working under the direction of a

qualified paleontologist. **ALL PERSONS INVOLVED IN THE PALEONTOLOGICAL MONITORING OF THE PROJECT SHALL BE APPROVED BY THE ENVIRONMENTAL ANALYSIS SECTION.**

20. The qualified paleontologist shall attend any preconstruction meetings to discuss grading plans with the grading and excavation contractor. The requirement for paleontological monitoring shall be noted on the grading plans.

21. The Paleontologist or paleontological monitor shall be on-site full-time during original cutting of previously undisturbed sediments of the Ardath Shale and Lindavista Formations to perform periodic inspections of excavations and, if necessary, to salvage exposed fossils. The frequency of inspections will depend on the rate of excavation, the materials excavated and the abundance of fossils.

22. In the event that well-preserved fossils are found, the paleontologist shall have the authority to divert, direct or temporarily halt grading activities in the area of discovery to allow evaluation and recovery of exposed fossils. **AT THE TIME OF DISCOVERY, THE PALEONTOLOGIST SHALL IMMEDIATELY NOTIFY THE ENVIRONMENTAL ANALYSIS SECTION STAFF OF SUCH FINDING.** EAS shall approve salvaging procedures to be performed before construction activities are allowed to resume.

23. All collected fossil remains shall be cleaned, sorted and cataloged following standard professional procedures. The collection should be donated to a scientific institution with a research interest in the materials (such as the San Diego Natural History Museum).

24. Prior to the issuance of building permits, in the event fossils are found, a monitoring results report shall be submitted to and approved by the Environmental Review Manager of the Environmental Analysis Section. The monitoring results report, with appropriate graphics, shall summarize the results, analysis and conclusions of the paleontological monitoring program, even if negative.

Biological Resources

25. Prior to issuance of any grading permits the applicant shall conduct a gnatcatcher survey, if grading will occur between March 1 and August 15 (breeding season for the California gnatcatcher). If survey results are negative, than no further mitigation is required. If gnatcatchers are present and grading is to occur during the breeding season, then a temporary 4-foot to 6-foot plywood wall or dirt berm shall be constructed at the slope edge. However, if the applicant chooses not to conduct a gnatcatcher survey, then the temporary wall or berm shall be constructed. If grading will occur before March 1 and after

August 15, then no biological mitigation would be required for this project.

Alternative mitigation measures based on a biology survey and specific acoustical study may be proposed by the applicant, and if acceptable to the Environmental Review Manager, may replace the above mitigation measures.

26. Prior to issuance of any building permits, the applicant shall show on plans that lighting of all developed areas adjacent to the Multiple Habitat Planning Area (MHPA) shall be directed away from the MHPA. Where necessary, development shall provide adequate shielding with non-invasive plant materials (preferably natives), berming and/or other methods to protect the MHPA and sensitive species from night lighting. These conditions should be clearly indicated on the project site plan.

27. Prior to issuance of any grading permits the final map shall indicate a "Fee Simple" open space lot deeded to the City of San Diego that encompasses the MHPA on-site. The initial "Fee Simple" dedication shall consist of 8.7-acres with the balance to be dedicated to the City of San Diego once the available mitigation credits are allocated. The total mitigation requirement for the project is 5.8 acres of coastal sage scrub and 2.9 acres of mixed chaparral, which shall be met by on-site preservation within the MHPA. The management plan for the open space lot shall incorporate the City's MHPA Land Use Adjacency Guidelines.

28. Prior to issuance of any grading permits, the applicant shall show that sediment basins, desilting basins or silt traps shall be installed in conjunction with the initial grading operations and maintained throughout the development process, as well as during the operation period, as necessary, to remove sediment from runoff waters draining from the land undergoing development consistent with State Water Resources Board (SWRB) requirements.

29. Installation of grassed swales/infiltration trenches/or fossil filter systems at parking lot boundaries for pollutant control shall be designed to the City Engineer's standards for Urban Storm Water Management (Best Management Practices). Design and implementation shall be to the satisfaction of the City Engineer.

30. A grading plan that incorporates runoff control procedures to be utilized during all phases of project development shall be prepared and submitted concurrently with subdivision improvement plans, where such development is proposed on land that will be graded or filled. Such a plan shall be prepared by a registered civil engineer and shall be designed to ensure that there will be no significant increase in the peak runoff rate from the fully

developed site over the greatest discharge that would occur from the existing undeveloped site as a result of the intensity of rainfall expected during a six-hour period once every ten years. Runoff control shall be accomplished by establishing on-site catchment basins, detention basins and siltation traps along with energy dissipating measures at the terminus of storm drains or other similar means of equal or greater effectiveness. Alternative designs for the implementation of runoff and erosion control devices on individual lots, at the site planning stage, shall be approved by the City Engineer and Development Services Manager. The grading plan shall also incorporate a maintenance program for erosion and runoff control measures which shall be approved by the City Engineer and Development Services Manager.

31. In addition to the above mitigation measures/conditions for biology, the following shall be made a condition of approval:

Third Party Beneficiary Status
Standard Condition

The issuance of this permit by The City of San Diego does not authorize the applicant to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).

32. In accordance with authorization granted to The City of San Diego from the United States Fish and Wildlife Service (USFWS) pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game (CDFG) pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program (MSCP), The City of San Diego through the issuance of this permit hereby confers upon permittee the status of Third Party Beneficiary as provided for in Section 17 of The City of San Diego Implementing Agreement (IA), executed on July 16, 1997 and on file in the Office of the City Clerk as Document No. 00-18394. Third Party Beneficiary status is conferred upon permittee by the City: (1) to grant permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by The City of San Diego pursuant to this permit shall be altered in the future by The City of San Diego, USFWS or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this permit and of full satisfaction by permittee of mitigation obligations required by

this permit, as described in accordance with Section 17.1D of the IA.

The above mitigation monitoring and reporting program will require a deposit of \$450.00 to be collected prior to the issuance of building permits, certificates of occupancy and/or final maps to ensure the successful completion of the monitoring program.

ENGINEERING REQUIREMENTS:

33. Towne Center Drive is classified as a 2 lane collector. The subdivider shall provide a temporary public improvement consisting of pavement which is a 70 foot radius cul-de-sac at the northernmost entrance, shall provide an irrevocable offer of dedication for future extension of Towne Centre Drive, and shall enter into a bonded deferred improvement agreement for the construction of full-width public improvements along project frontage for future extension of Towne Centre Drive satisfactory to City Engineer.

34. The subdivider shall obtain a grading permit from the City Engineer (referred to as an "engineering permit") for the grading proposed for this project. All grading shall conform to requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

PLANNING/DESIGN REQUIREMENTS:

35. No fewer than 600 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated June 16, 1998, on file in the Office of Development Services. Parking spaces shall comply at all times with the Municipal Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

36. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

37. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or

the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit.

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

39. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

40. All signage associated with this development shall be consistent with Citywide sign regulations.

41. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.

42. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.

43. All uses, except storage and loading, shall be conducted entirely within an enclosed building. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences or a combination thereof. Walls or fences shall be solid and not less than six feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.

44. No mechanical equipment, tank, duct, elevator enclosure, cooling tower or mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed structure whose top and sides may include grillwork, louvers and latticework.

45. No merchandise, material or equipment shall be stored on the roof of any building.

46. No mechanical equipment shall be erected, constructed, or enlarged on the roof of any building on this site, unless all such equipment is contained within a completely enclosed architecturally integrated structure.

LANDSCAPE REQUIREMENTS:

47. Prior to issuance of any grading, or building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated June 16, 1998, on file in the Office of Development Services. No change, modification or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

48. Prior to issuance of any Certificate of Occupancy it shall be the responsibility of the Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

49. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit. The Permittee, or subsequent owner shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

50. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.

51. The Brush Management Program is based on the Fire Department's Fire Hazard Severity Classification. The Permittee shall comply with the applicable provisions of the "Landscape Technical Manual - Section 6," Document No. RR-2274506, and shall implement the requirements of the Brush Management Program shown on Exhibit "A," Landscape Concept Plan/Brush Management Program, dated June 16, 1998, on file in the Office of Development Services.

WATER AND SEWER REQUIREMENTS:

52. The subdivider shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two (2) fire hydrants and/or thirty (30) equivalent dwelling units are located on a dead-end main then the subdivider shall install a looped water system.

53. The subdivider shall design all public water and sewer facilities to the most current edition of the "City of San Diego Water & Sewer Design Guide." If facilities do not meet the current standards, then such facilities shall be private.

54. The subdivider shall grant adequate water, sewer, and/or vehicular access easements, including vehicular access to each appurtenance (meters, blow offs, air valves, manholes, etc.), for all public water and sewer facilities that are not located within public rights-of-way, satisfactory to the Water and Metropolitan Wastewater Departments' Managers. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the appropriate department manager. Minimum easement widths: water mains with services or fire hydrants - 24 feet, sewer mains with manholes - 20 feet. The easements shall be located within single lots. No structures or trees shall be installed in or over any easement prior to the applicant obtaining an encroachment removal agreement.

55. The subdivider shall provide evidence, satisfactory to the Water and Metropolitan Wastewater Departments' Managers, indicating that each lot will have its own water service and sewer lateral or provide Codes, Covenants and Restrictions (CC&R's) for the operation and maintenance of on-site private water and sewer mains that serve more than one lot. Also, provide private easements for the private mains.

56. Providing water and sewer for this development is dependent upon prior construction of certain water and sewer facilities in previously approved VTM 88-0076 in this area. If they have not been constructed when required for this development, then the construction of certain portions of these previously approved water and sewer facilities, as required by the City Engineer, will become off-site improvements required for this development.

APPROVED by the Council of The City of San Diego on _____,
1998, by Resolution No. R-290280.

AUTHENTICATED BY THE CITY MANAGER

By _____

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

EASTGATE ACRES, LLC
Owner/Permittee

By _____

By _____

NOTE: Notary acknowledgments must be attached per Civil Code section 1180 et seq.

8/24/98