

RESOLUTION NUMBER R-290668

ADOPTED ON SEPTEMBER 8, 1998

WHEREAS, SORRENTO SAND, INC./B.R.E., INC, Owner/Permittee, filed an application with the City of San Diego for a permit to develop 348 apartment units in 16 structures and a recreation building (as described in and by reference to the approved Exhibits "A") and corresponding conditions of approval for the associated Carmel Valley Planned District and Resource Protection Ordinance Permit LDR No. 96-7614, on portions of a 39.9 acre site, located at 11860 Carmel Creek Road, legally described as the Northeast Quarter of Section 30, Township 14 South, Range 3 West, San Bernardino Meridian, in the Carmel Valley Community Plan area, in the MF-2 zone; and

WHEREAS, after approval of the above referenced project by the City Council, Sorrento Sand Company, Inc., will transfer ownership of the property to B.R.E. Properties, Inc., thereby making B.R.E. Properties, Inc., the Owner/Permittee of the Pinnacle Carmel Creek project; and

WHEREAS, on July 30, 1998, the Planning Commission of The City of San Diego considered Carmel Valley Planned District and Resource Protection Ordinance Permit LDR No. 96-7614 pursuant to Municipal Code sections 101.0462 and 103.067; and

WHEREAS, the matter was set for public hearing on September 8, 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 Carmel Valley Planned District and Resource Protection Ordinance Permit LDR No. 96-7614:

RESOURCE PROTECTION ORDINANCE FINDINGS:

A. The Proposed Development will not adversely affect the City of San Diego's Progress Guide and General Plan.

The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan. The proposed development, a mix of residential and open space uses, is consistent with the land use recommendations of the adopted Progress Guide and General Plan, which designates the property for residential and open space use. The proposed development is consistent with adopted housing, and open space elements of the General Plan by providing the type of residential units and open space as anticipated by the adopted Carmel Valley Community Plan. The Progress Guide and General Plan Housing Element seeks to provide housing for all economic segments of the community and to make available adequate sites for the development of a variety of housing. The proposed development will consist of 348 rental apartment units. Water, sewer, and other utilities also are proposed within the right-of-way of Carmel Creek Road North, which is proposed to provide access to the property from the north.

B. The proposed development will conform to the community plan for the area and any other applicable plans, policies, and ordinances.

The type of land use proposed (residential and open space) is consistent with the goals and objectives of the adopted Carmel Valley Community Plan, which designates this property for residential development and open space. The configuration of proposed land uses within the project is consistent with the City's adopted MHPA Subarea Plan for the parcel by virtue of a boundary adjustment which took the mined slopes, which were mapped as part of the preserve, out of the MHPA and added valuable coastal sage scrub to the preserve. The project also conforms to the Neighborhood 8 Precise Plan which identifies this area for "duplexes, four-plexes, and other multi-family housing." The proposed development will conform to the community plan for the area and any other applicable plans, policies, and ordinances.

C. The proposed development will be sited, designed, constructed and maintained to minimize, if not preclude, adverse impacts on environmentally sensitive lands.

The proposed development will be sited, designed, constructed and maintained to minimize, if not preclude, adverse impacts on environmentally sensitive lands. The City's Multiple Species Conservation Program (MSCP) Subarea Plan identifies a Multi-Habitat Planning Area (MHPA) in the City for preservation of core biological resource areas and corridors targeted for preservation. Due to the proposed boundary adjustment to include more valuable habitat in the preserve while removing previously mined areas, the project will be in conformance with the MHPA.

D. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks

and public open-space areas and will provide adequate buffer areas to protect such resources.

Improvements to Carmel Creek Road will result in impacts to 0.04 acres of wetland occurring in an artificial drainage channel which are considered sensitive lands. This resource will be mitigated by creation of a minimum 0.12 acre wetland within a proposed detention basin in the northwest portion of the site.

Currently, there are no identified public parks or public open space areas on adjacent lands. The Neighborhood 8 Precise Plan amendment will require a 4.0 acre park to be located to the northeast of the Pinnacle project. With approval of the proposed development plan, on-site open space lands will be dedicated to the City for inclusion in the MHPA. Adequate buffers have been incorporated in the project design between proposed development and the future MHPA in accordance with the City's MSCP Subarea Plan MHPA Adjacency Guidelines. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks and public open-space areas and will provide adequate buffer areas to protect such resources.

E. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards.

The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards. Proposed conditions of project approval will eliminate risks resulting from geological and erosional problems and flood and fire hazards. The site has been extensively altered by mining activities creating numerous manufactured slopes. The majority of slopes on the site are, therefore, not subject to the Resource Protection Ordinance.

F. Feasible measures as defined in this section, to protect and preserve the special character or the special historical, architectural, archaeological or cultural value of affected significant prehistoric site or resource, have been provided by the applicant.

Feasible measures to protect and preserve the special character or the special historical, architectural, archaeological or cultural value of affected significant prehistoric site or resource have been provided by the applicant. The site is vacant and no significant archaeological features exist on-site. The project has the potential to impact important paleontological resources and the applicant has agreed to a mitigation, monitoring and reporting program which will reduce the potential for these impacts to below a level of significant.

SAN DIEGO MUNICIPAL CODE SECTION 101.0462.0027 - REQUIRED FINDINGS FOR IMPACTS TO SENSITIVE BIOLOGICAL RESOURCES:

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

The proposed development, a mix of residential and open space uses, is consistent with the land use recommendations of the adopted Progress Guide and General Plan, which designates the property for residential and open space use. The type of land use proposed (residential and open space) and the type and quantity of development proposed (multi-family apartments) are consistent with the goals and objectives of the adopted Neighborhood 8 Precise Plan, which designates this property for clustered multi-family residential development and open space.

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

The proposed development, a mix of residential and open space uses, will not be detrimental to the public health, safety, and welfare. The provision of brush management zones that separate residential structures from potential fire hazards assure that proper health, safety and welfare issues have been addressed by project design.

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

The proposed development will comply with the applicable regulations of the Municipal Code including the multifamily zones, landscape regulations, parking regulations, and the Resource Protection Ordinance.

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 site is physically suitable for the design and siting of the proposed residential and open space uses. Water, sewer, and other utilities also are proposed within the right-of-way of Carmel Creek Road North, which is proposed to access the project from the north. The site is surrounded by existing rural development on the north and west while the areas to the south and east are undeveloped. The development plan has been designed to minimize disturbance to sensitive biological resources. The configuration of land uses proposed on the Pinnacle parcel is consistent with the City's adopted MSCP Subarea Plan for the parcel which designates a portion of the site's eastern and western slopes to be preserved as open space.

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

The proposed project design will comply with Section 1.4.3 Land Use Adjacency Guidelines (pp. 48-49) of the City's MSCP Subarea Plan which provides specific guidelines for minimizing development impacts on the MHPA.

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

The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The City's MSCP identifies a Multi-Habitat Planning Area (MHPA) in the City for preservation of core biological resource areas and corridors targeted for preservation. The configuration of land uses proposed on the Pinnacle parcel is consistent with the City's adopted MSCP Subarea Plan for the parcel and the Neighborhood 8A MHPA place-holder, which designates a portion of the site's valley to be preserved as open space. Additionally, the proposed project design will comply with Section 1.4.3 Land Use Adjacency Guidelines (pp. 48-49) of the City's MSCP Subarea Plan which provides specific guidelines for minimizing development impacts on the MHPA.

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 nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, impacts to biological resources created by the proposed development. Mitigation requirements were determined based on the mitigation ratios established under the City of San Diego's MSCP Subarea Plan; i.e., Vegetation Tiers I-IV. Additionally, the proposed mitigation plan demonstrates functional equivalency for impacts to the MHPA such that the mitigation area has the same or higher biological value for the MHPA in comparison to the MHPA preserve boundary previously identified on the parcel.

SAN DIEGO MUNICIPAL CODE SECTION 101.0462.0028 - DEVIATIONS FROM SENSITIVE BIOLOGICAL RESOURCES REGULATIONS:

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

The project design provides for the preservation of a portion of the site's eastern and western slopes, which are designated by the City's MHPA for open space preservation. Mitigation requirements for direct impacts to biological resources are specified in the Pinnacle Carmel Creek EIR and were determined based on the mitigation ratios established under the City of San Diego's MSCP Subarea Plan. The project design has incorporated all feasible measures to minimize impacts to biological resources and there are no other feasible measures that can further minimize the potential adverse effects to sensitive resources.

B. 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 final project design results in a deviation that is the minimum necessary to afford relief from the special conditions of the land not of the applicant's making. Impacts to 0.04 acres of wetland will occur with the construction of proposed improvements to Carmel Creek Road. The proposed extension of Carmel Creek Road to access this development has been sited to connect with the portion of roadway which has already been constructed to the north of the project site. There are no alternative alignments that would result in less impacts and still provide access to the

site in a manner consistent with City standards. The wetland that would be affected occurs in a portion of an artificial drainage channel which has been previously altered. Impacts to this wetland would be fully mitigated.

BRUSH MANAGEMENT FINDINGS:

A. The proposed Brush Management Program, to the extent feasible, will not adversely affect floodplains, biologically sensitive lands, hillsides, significant prehistoric sites and resources, and wetlands as defined in the Resource Protection Ordinance, San Diego Municipal Code section 101.0462.

The proposed Brush Management Program, by providing the required brush management zones of the *Landscape Technical Manual* as shown on Exhibit "A," will modify the existing vegetation to the least practical extent while still providing the necessary fire protection to persons and property as required by the Uniform Fire Code, Appendix IIA. Plant materials in Brush Management Zones One and Two will be selected to visually blend with the existing hillside vegetation and no invasive species shall be used.

B. The proposed Brush Management Program, 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.

The proposed Brush Management Program, by using Alternative Compliance Provision (Section 6.2) and Zone Reduction (Sections 6.6-2, 6.6-3 and 6.6-5) of the *Landscape Technical Manual* including a concrete retaining wall as shown on Exhibit "A" will modify the existing vegetation to the least practical extent while still providing the necessary fire protection to persons and property as required by the Uniform Fire Code. All new plantings on slopes will conform to the Revegetation Standards of the *Landscape Technical Manual*, Section Seven, and incorporate low precipitation irrigation systems to minimize runoff.

BRUSH MANAGEMENT ALTERNATIVE COMPLIANCE FINDINGS:

A. The proposed Brush Management Program will meet the purpose and intent of Appendix IIA of the Uniform Fire code.

The proposed development complies with the purpose and intent by providing an effective fire break by means of an Alternative Brush Management Zone, including a concrete retaining wall as shown on Exhibit "A" and the Alternative Compliance Provision (Section 6.2), the Architectural Features (Sections 6.6-2), and Zone Reduction Application (Sections 6.6-3 and 6.6-5) of the *Landscape Technical Manual*, Section Seven.

B. The Brush Management Program, 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.

Requirements incorporated into the permit provide an effective fire break and ensure minimal risk of erosional forces affecting hillsides by providing re-vegetation to all slopes per the *Landscape Technical Manual*.

C. The provisions outlined in Section 6.6-2 of the Landscape Technical Manual (on file in the Office of the City Clerk as Document Number RR-274506) shall be satisfied and the proposed development shall provide other fire resistive features as required by the Fire chief.

The Architectural Features (Section 6.6-2) of the *Landscape Technical Manual* have been incorporated into the project and in addition a concrete retaining wall as shown on Exhibit "A" have been incorporated into the project to provide additional fire resistive features.

D. Compliance with the provisions of this section in addition to any other applicable adopted plans or ordinances would preclude reasonable development on the site.

Due to site constraints, open space easements and a site design which comply with the Carmel Valley Community Plan and the Carmel Valley Planned Development and Resource Protection Ordinance Permit (which includes a site layout and setbacks which would not accommodate the literal compliance with the provisions of the Uniform Fire Code), this project would require encroachment into sensitive habitat and the adjoining property, therefore, the Alternative Compliance Provision of the *Landscape Technical Manual* has been implemented to allow for reasonable development of the site.

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 Carmel Valley Planned District and Resource Protection Ordinance Permit LDR No. 96-7614 is hereby granted to B.R.E. Properties, Inc., 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

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**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

**Carmel Valley Planned District/Resource Protection Ordinance
Permit - LDR No. 96-7614
PINNACLE CARMEL CREEK
City Council**

This Permit is granted by the Council of The City of San Diego to B.R.E. Properties, Inc., a Maryland corporation, Owner/Permittee, pursuant to Sections 101.0462 and 103.0607 of the Municipal Code of the City of San Diego. The 39.9 acre site is located at 11860 Carmel Creek Road in the Carmel Valley MF-2 zone of the Carmel Valley Community Plan. The project site is legally described as the Northeast Quarter of Section 30, Township 14 South, Range 3 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California, according to official plat thereof.

Subject to the terms and conditions set forth in this permit, permission is granted to B.R.E. Properties, Owner/Permittee, to develop 348 apartments with attached garages in 16 two- and three-story buildings including a recreation building with pool, spa and meeting rooms described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated September 8, 1998 on file in the Office of Development Services. The facility shall include:

- a. Sixteen two- and three-story apartment buildings with a total gross floor area of 580,568 square feet;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Eight hundred eighteen Off-street parking places;
- d. A 7, 220 square foot recreation building with pool, spa, and meeting rooms, and
- 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 State Coastal Commission approval/certification of the related Local Coastal Program Amendment. 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. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial 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.
7. 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 September 8, 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.
8. 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.

9. All projects submitted for plan check for the purpose of obtaining building permits shall concurrently submit building plans which meet the submittal requirements of the "Applicant's Guide to Project/Permit Applications," as applicable; together with appropriate plan check fees.
10. 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 Municipal Code.
11. All projects shall be in compliance with Maximum Height of a Building or Structure and Procedural Requirements for Determination of Structure of the Municipal Code.
12. This permit may be developed in phases. Each phase shall be constructed prior to rent or lease to individual tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase (per the approved Exhibits "A," dated September 8, 1998, on file in the Office of Development Services).
13. Prior to renting or leasing any unit in this development, the permittee shall disclose to prospective tenants that the property is subject to noise and visual impacts from Marine and other military aircraft associated with the operation of USMC Miramar.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

14. 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. Section 1531 et seq.).
15. 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. OO-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.

16. The drainage plan for the project shall ensure that drainage from developed and paved areas is directed away from the Multiple Habitat Planning Area (MHPA) and into an existing storm drain in Carmel Creek Road.
17. Landscape maintenance activities in areas immediately adjacent to the MHPA shall avoid the use of chemicals for fertilization and pest control. Landscaped areas within the project where chemicals may be used for fertilization and to control weeds and pests shall be designed to drain away from the MHPA.
18. Invasive plant species shall not be included in the landscaped areas adjacent to the MHPA.
19. All project lighting shall be directed inward toward development and away from the MHPA.
20. The applicant shall contribute a fair share percentage of regional transportation improvements in accordance with a developer/agency agreement or other funding mechanism approved by the applicable agency(ies).
21. Prior to the issuance of a certificate of occupancy, the applicant shall provide an additional northbound through lane and an eastbound travel lane at SR 56 eastbound and El Camino Real. This improvement shall be completed to the satisfaction of the City Engineer.
22. Prior to the issuance of a certificate of occupancy, the applicant shall construct Carmel Creek Road from the existing terminus to the project access as a two-lane multi-family collector street with appropriate transitions. The improvement shall be completed to the satisfaction of the City Engineer.
23. If the City decides to open Sorrento Valley Road to northbound traffic only, no additional measures beyond those presented above would be required. In the

event the City decides to close Sorrento Valley Road to vehicular traffic, the following additional measure shall be required:

- a. With Sorrento Valley Road closed and with the deletion of a through connection for Carmel Creek Road, between SR 56 and Carmel Mountain Road, a third eastbound left turn lane at El Camino Real/Carmel Mountain Road is required. This is a nonstandard design and may not be acceptable to the City. If accepted, the project applicant shall contribute a fair share amount for this improvement in order to mitigate impacts to below a level of significance. If the City determines that this nonstandard improvement is not acceptable, impacts associated with closing Sorrento Valley Road and deleting Carmel Mountain Road would remain significant and unmitigated. Only the opening of Sorrento Valley Road or the retention of Carmel Creek Road as a through connection to Carmel Mountain Road would avoid this impact.
24. Prior to the issuance of the grading permit, the applicant shall provide verification in the form of a letter to the Environmental Review Manager (ERM) that a qualified biologist who is licensed by the U.S. Fish and Wildlife Service to perform protocol surveys for sensitive avian species has been retained to implement the following measures:
- a. No more than one month prior to construction, conduct three protocol surveys to determine the absence or presence and location(s) of California gnatcatchers in the coastal sage scrub habitat that is adjacent on the east side of the subject property. If no occupied nesting sites are discovered within 150 feet of the edge of the excavated "bowl," there is sufficient topographical shielding such that no special noise impact mitigation shall be required.
 - b. If occupied nesting sites are found within 150 feet of the edge of the bowl, construction noise shall be reduced to 60 dB at the edge of the occupied habitat. This shall be accomplished by the following:
 - 1) Restricting construction activities during the gnatcatcher breeding season, which is between March 1 and August 15; or
 - 2) Constructing a temporary noise and line-of-sight barrier between the habitat and the construction; and/or
 - 3) Installing noise-attenuating devices on construction equipment.
 - c. If either or both of the second two noise reduction methods are implemented, the applicant shall provide verification in the form of a letter to the ERM that a qualified acoustical engineer has been retained to monitor the noise levels at the edge of the habitat.
 - d. If it is necessary to restrict grading to the gnatcatcher breeding season, grading activities shall be phased such that grading of areas farthest from gnatcatcher habitat shall be accomplished during the breeding season

without impacting the gnatcatcher, and grading of areas closer to the habitat shall be accomplished during the non-breeding season.

25. Prior to the issuance of the grading permit, the applicant shall provide verification in the form of a letter to the ERM that a qualified biologist has been retained to prepare a detailed wetland habitat creation plan and implement the wetland MMRP specified in the EIR.
 - a. The wetland plan shall be submitted to the ERM for review and approval prior to the issuance of the grading permit. A surety bond shall be posted at this time.
 - b. Prior to the release of the surety bond, the restored wetland area shall be reviewed by a certified biologist to determine that the MMRP has been implemented.
26. Prior to the issuance of the grading permit and one week prior to construction of the off-site improvements, the project biologist shall flag the limits of construction to ensure that riparian impacts are 0.04 acre or less.
27. Prior to the issuance of the grading permit, the applicant shall provide verification in the form of a letter to the ERM that a qualified biologist has been retained to prepare and implement a slope revegetation plan as specified in the EIR and MMRP. The slope revegetation plan shall be subject to the same review and approval and bonding process as the wetland plan mentioned above.
28. Prior to the issuance of the grading permit, the applicant shall record a covenant of easement for those portions of the project site located within the adjusted MHPA.
29. The grading plan shall be prepared to incorporate runoff and erosion control procedures to be utilized during all phases of the project development. The grading plan shall be submitted concurrently with subdivision improvement plans, where development is proposed on land that will be graded or filled.
30. 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 Department.
31. The grading plan shall incorporate a maintenance program for erosion and runoff control measures, which shall be approved by the City Engineer and Development Services Department. The erosion and runoff control measures shall be designed and bonded prior to acceptance of the grading and public improvements by the City. The applicant and future property owners shall be responsible for the specialized maintenance program and shall maintain records of the maintenance.
32. Erosion control measures shall be provided to the satisfaction of the City Engineer in conjunction with site development. These measures shall include such devices

as hay bales and sandbags to control and direct runoff during construction, temporary detention basins to detain runoff and restrict sediment from leaving the site, directing runoff to the storm drain system proposed as part of the project and permanent desiltation basins constructed for the community, and the placement of rip rap at outlets draining into natural areas to dissipate energy and help trap sediment. The locations shall be noted on the grading plans. Prior to the issuance of grading permits, the Environmental Analysis Section (EAS) shall review the plans to ensure the measures have been provided. The applicant shall notify the EAS upon installation of the erosion control devices prior to release of the subdivision bond. Annual maintenance reports summarizing their effectiveness shall be provided to the EAS for a period of three years. The maintenance of erosion control devices shall be the responsibility of the developer or subsequent property owner. The City shall be responsible for maintenance of drainage improvements in the public right-of-way and in public easements.

33. Landscaping of cut/fill slopes and the undeveloped building pads shall be accomplished within 90 days of infrastructure installation.
34. Prior to the issuance of grading permits, the EAS shall review plans to ensure the measures have been provided. In conformance with the provisions of AB 3180, the applicant shall retain a soils engineer to monitor the grading, construction, and installation of runoff control devices and revegetation of the project site. The soils engineer shall submit in writing to the City Engineer and EAS certification that the project has complied with the required notes on the grading plan addressing erosion/urban runoff controls prior to the issuance of building permits for the project.
35. Site grading shall be conducted outside of the traditional California rainy season (November 1 through April 1), unless special erosion control measures are implemented to the satisfaction of the City Engineer.
36. Energy dissipation devices shall be installed at the terminus of canyon subdrains to minimize erosion impacts to native vegetation.
37. Slope stability for manufactured slopes shall attain a factor of safety of 1.5 or greater considering both gross and surficial stability and long-term weathering. With the exception of the existing mined slope in the western portion of the site, manufactured slopes will be 2:1. Manufactured slopes are considered to include both cut and fill slopes, excepting those slopes unmodified by human activity still in their natural condition. To achieve a minimum factor of safety of 1.5 for the western slope, two "keystone" engineered walls are proposed for use at the toe of the slope where two buildings are tangent to the east-facing slope adjacent to the western property line. The walls would vary in height from four to eight feet. Portions of the previously manufactured east-facing slope will be re-graded so that a final slope gradient averaging 2:1 is achieved across the mined slope. Geogrid is proposed for use at the top of the east-facing slope and other locations where an acceptable factor of safety cannot be established by other means or where the slope gradient is steeper than 2:1.
38. To mitigate conditions associated with anticipated fill thickness and sharp fill depth differentials, the proposed building pad shall be undercut to a depth such

that at least ten feet of compacted fill underlie the site; cut/fill lines shall be laid back to a minimum 2:1 inclination; heavier foundations and slabs on grade shall be utilized for the support of the proposed structures affected by sharp fill depth differential; and a similar foundation system shall be utilized for structures underlain by compacted fill soils exceeding 30 feet in depth.

39. To mitigate moderate to high expansion potential, material shall be placed at a minimum depth of four feet from finished pad grade in proposed building areas and two feet from finished pad grade in proposed parking areas.
40. Prior to the issuance of grading permits, the City Engineer shall review and approve all grading plans to ensure that grading will be performed in accordance with the geotechnical investigation.
41. Prior to the issuance of building permits, the City Engineer shall review and approve all construction documents to ensure adherence to the applicable foundation recommendations contained in the geotechnical investigation.
42. Rip rap dissipaters and filter blanket material shall be placed at all storm drain discharge points to reduce flow velocities.
43. Temporary erosion control measures shall be utilized during construction, i.e., sandbagging, sediment basins, silt traps, desilting basins or debris basins.
44. The timing of the grading operations shall be restricted to the non-rainy season, and construction of the drainage facilities to occur concurrently with the grading activities. Areas disturbed but not completed prior to November 15, including graded pads and stockpiles, shall be stabilized to prevent excessive soil loss during late fall and winter seasons. All graded slopes shall be stabilized prior to November 15. Vegetation as a means to control site erosion shall be accomplished pursuant to plans and specifications prepared by a licensed landscape architect or otherwise qualified professional.
45. The project applicant shall contribute to the Los Peñasquitos Lagoon Enhancement Fund computed on the basis of Coastal Zone portions of the site affected by grading for development at a rate of \$0.005 per square foot, plus an additional \$0.03 per square foot for impervious surfaces created by the development. The project would affect 15.4 acres (670,824 square feet) in the Coastal Zone by grading and create 10.2 acres (444,312 square feet) of impervious surfaces within the Coastal Zone, which would result in a required contribution of \$16,683.48 to the fund. The applicant shall provide evidence satisfactory to the City that such payment has been made prior to issuance of building permits.
46. In order to comply with the California Regional Water Quality Control Board NPDES Permit No. CA 0108758, implementation of Best Management Practices (BMPs) is required for the project. Specific BMPs shall be shown on final engineering plans as required by the City Engineer and the requirement to implement BMPs shall be made a condition of approval of the *Pinnacle Carmel Creek Carmel Valley PDDP*. Monitoring shall be the responsibility of the City Engineer and the Regional Water Quality Control Board.

47. At the completion of construction of the project's storm drain system, storm drains shall be stenciled indicating that materials placed in the storm drains discharge to a sensitive coastal lagoon as a form of public education.
48. Prior to the issuance of building permits, a detailed acoustical report shall be submitted to the Acoustical Plan Check Section and EAS indicating that interior noise levels are below 45 dB(A) based on average daily traffic volumes of 115,000 along State Route 56. Construction features to reduce interior noise levels shall be called out on plans as "Environmental Mitigation Measures." The Acoustical Plan Check Section shall review building plans to ensure that interior noise levels do not exceed 45 dB(A) based on future roadway volumes.
49. All construction and general maintenance activities, except in an emergency, shall be limited to the hours of 7 a.m. to 7 p.m. Monday through Saturday and should utilize the quietest equipment available. All on-site construction equipment should have properly operating mufflers and all construction staging areas should be as far away as possible from any surrounding completed development.
50. Prior to the issuance of a grading permit, the applicant shall provide a letter of verification to the Environmental Analysis Section of the Development Services Department stating that a qualified paleontologist has been retained to implement the monitoring program.
51. All persons involved in the paleontological monitoring of this project shall be approved by EAS.
52. Prior to the issuance of building permits, the monitoring results shall be submitted to and approved by the ERM.
53. The applicant shall participate in the Mello-Roos CFD and Mitigation Agreement formed by the school districts for the community.
54. The drainage plan for the project shall ensure that drainage from developed and paved areas is directed away from the Multiple Habitat Planning Area (MHPA) and into an existing storm drain in Carmel Creek Road.
55. Landscape maintenance activities in areas immediately adjacent to the MHPA shall avoid the use of chemicals for fertilization and pest control. Landscaped areas within the project where chemicals may be used for fertilization and to control weeds and pests shall be designed to drain away from the MHPA.
56. Invasive plant species shall not be included in the landscaped areas adjacent to the MHPA.
57. All project lighting shall be directed inward toward development and away from the MHPA.

ENGINEERING REQUIREMENTS:

58. Prior to the issuance of the first building permits, the applicant shall assure by permit and bond, the construction of an additional northbound through lane and an



eastbound travel lane at SR-56 eastbound and El Camino Real, satisfactory to the City Engineer.

59. Carmel Creek Road from SR-56 to Neighborhood 8A is classified as a four-lane major street with a 78 foot pavement within 98 feet right-of-way and five feet contiguous sidewalk.

If the portion of Carmel Creek Road between the project access and Street "A" in Neighborhood 8A is deleted, then Carmel Creek Road between SR-56 and the project site is classified as a two-lane collector street with a 40 foot pavement and five feet contiguous sidewalk within 60 feet of right-of-way.

Prior to the issuance of the first building permit, the applicant shall:

- a. Assure by permit and bond, construction of 28 feet of pavement within the existing 34 feet of right-of-way with appropriate transition to the existing improvements to the satisfaction of the City Engineer. These improvements shall be completed and opened to traffic prior to the occupancy of the first building.
- b. Enter into a bonded agreement for right-of-way acquisitions as well as construction of the ultimate improvements to Carmel Creek Road to the satisfaction of the City Engineer. If the extension of Carmel Creek Road is not deleted, the agreement would address the four-lane major road improvements.

A reimbursement district, in accordance with the provisions of Section 62.0208 of the Municipal Code, may be established by the City Council to recover a portion of the costs of constructing the required public improvements when the adjacent properties develop.

60. Prior to the issuance of the first building permit, the applicant shall provide its fair share contribution for construction of a third eastbound left turn lane at El Camino Real and Carmel Mountain Road intersection, to the satisfaction of the City Engineer. This requirement may be deleted if Sorrento Valley Road between Carmel Mountain Road and Carmel Valley Road is open to traffic.
61. This development map is within the Carmel Valley Community, for which a Transportation Phasing Plan has been incorporated into the Public Facilities Financing Plan. Contained within this plan are individual traffic facility improvements. Before predetermined thresholds of development may be exceeded, the City Engineer must be satisfied that these improvements are either:
- a. completed;
 - b. under contract;
 - c. bonded;
 - d. scheduled and funded for construction in the immediate fiscal year of the City's Capital Improvement Program (CIP); or

- e. scheduled and funded for construction in the immediate fiscal year of the State Transportation Improvement Program (STIP).

The applicant is advised that issuance of building permits may be limited or otherwise withheld because of unsatisfied thresholds in the phasing plan. A copy of the Carmel Valley Public Facilities Financing Plan may be viewed or purchased at the office of the Facilities Financing Division.

- 62. Prior to issuance of building permits, the applicant shall demonstrate compliance with the North City West School Facilities Master Plan. Compliance may be evidenced through either of the following methods: (a) by otherwise demonstrating the availability of school facilities to accommodate residents of the subdivision; or (b) by participating in the "School Deposit Procedure: alternative, as provided in the Master Plan. A development agreement may be required, as provided in the North City West School Facilities Master Plan to implement the deposit procedure.
- 63. Vehicular access to the dwelling units within the CVPDP, shall be by a system of unnamed, non-dedicated privately maintained driveways, constructed in a manner satisfactory to the City Engineer.
- 64. The drainage system proposed for this development, is subject to approval by the City Engineer. All on site drainage shall be private.
- 65. Prior to the issuance of any building permits, the applicant shall provide a downstream drainage study, satisfactory to the City Engineer, that demonstrates that no adverse impacts will occur to downstream properties as a result of the increased runoff from this development or, if substantial impacts are anticipated, what measures must be taken to mitigate such impacts .
- 66. Prior to the issuance of any building permits, the applicant 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.
- 67. Decorative/enhanced pavement within the public right-of-way requires an Encroachment Removal Agreement and is subject to the City Engineer's approval.
- 68. The applicant shall enter into a bonded landscape maintenance agreement, agreeing to maintain all landscaping, and appurtenances, within the City right-of-way adjacent to and within this development, until such time a landscape maintenance district or other such mechanism is established and assumes maintenance responsibility, satisfactory to the City Engineer.
- 69. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 92-08-DWQ (NPDES General Permit No. CAS000002), *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity*. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be developed and implemented concurrently with the commencement of grading activities, and a complete and accurate Notice of Intent

(NOI) shall be filed with the SWRCB. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received.

In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 92-08-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 92-08-DWQ.

The following are information only items:

- This development may be subject to a building permit park fee in accordance with San Diego Municipal Code Section 96.0401 et seq.
- This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by California Government Code Section 53080(b) (Statutes of 1986, Chapter 887), in accordance with procedures established by the Development Services Manager.
- This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.

PLANNING/DESIGN REQUIREMENTS:

70. No fewer than 818 off-street automobile, motorcycle, and bicycle parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated September 8, 1998, on file in the Office of Development Services. Parking spaces shall comply at all times with Chapter X, Article 1, Division 8 of the Municipal Code and shall not be converted for any other use unless otherwise authorized by the City Manager.
71. 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.
72. All signage associated with this development shall be consistent with sign criteria established by the Adopted Carmel Valley Signage Guidelines and Criteria.
73. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
74. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

75. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
76. 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.
77. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked "Exhibit A," dated September 8, 1998, on file in the Office of Development Services.

LANDSCAPE REQUIREMENTS:

78. 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 September 8, 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.
79. Prior to issuance of grading permits and/or building permits, a reclamation plan in accordance with the provisions set forth in Article 5, California Surface Mining and Reclamation Act of 1975, shall be submitted to the satisfaction of the City Manager (including the Environmental Section) and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated September 8, 1998, on file in the Office of Development Services, and all other applicable conditions of related permits.
80. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Permittee shall initiate such measures within 90 days from the date that the grading of the site is deemed to be complete. Such erosion control and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the *Landscape Technical Manual*.
81. Prior to issuance of any Certificate of Occupancy of the first unit, 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.
82. 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.

83. 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.
84. Prior to the issuance of a building permit, the applicant shall submit complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), for the required street tree improvements and the erosion control for new slope areas. The landscape construction documents shall be in substantial conformance with Exhibit "A" dated September 8, 1998, Landscape Concept Plan, on file in the Office of Development Services.
85. Prior to the issuance of a building permit, the applicant shall assure by permit and bond the construction of landscaping.

BRUSH MANAGEMENT REQUIREMENTS:

86. The Brush Management Program is based on the Fire Department's Fire Hazard Severity Classification of High. The Permittee shall implement the following requirements in accordance with the Brush Management program shown on Exhibit "A" Brush Management Program/Landscape Concept Plan, dated September 8, 1998, on file in the Office of Development Services:
 - a. Prior to the issuance of any grading or building permits, construction documents shall be submitted indicating that the appropriate brush management zones have been recorded on the property in substantial conformance with Exhibit A. The construction documents (site plan, landscape/brush management plan) shall show Zone One as a Building Restricted Area and Zones Two and Three as Negative Open Space Areas.
 - b. Prior to the issuance of any building permits, a complete set of brush management construction documents shall be submitted for approval to the City Manager and the Fire Chief. The construction documents shall be in substantial conformance with Exhibit "A" and shall comply with the Uniform Fire Code, San Diego Municipal Code section 55.0889.0201, and Section Six of the *Landscape Technical Manual* (Document Number RR-274506) on file in the Office of the City Clerk.
 - c. Within Zone One combustible accessory structures with less than a one hour fire rating are not permitted, including but not limited to: wood decks, trellises, gazebos, etc. Non-combustible accessory structures and/or combustible accessory structures with a minimum fire rating of one hour or

more, may be approved within the designated Zone One area subject to approval by the Fire Chief and the City Manager.

- d. All requirements for fire resistive construction and other architectural features shall conform to the applicable City and Regional Building Code Standards. The Fire Chief may consider deviations from these conditions or may require additional conditions at the time of final inspection if it is determined an eminent health and safety risks still exist.
 - e. Plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted.
 - f. Provide the following note on the Brush Management Construction Documents: It shall be the responsibility of the Permittee to schedule a pre-construction meeting on site with the contractor and Development Services to discuss and outline the implementation of the Brush Management Program.
87. Prior to the issuance of any Certificate of Occupancy for any building, the approved Brush Management Program shall be implemented.
88. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's *Landscape Technical Manual* as shown on Exhibit "A," dated September 8, 1998, on file in the Office of Development Services, Permittee will modify the existing vegetation to the least practical extent while still providing the necessary fire protection to persons and property as required by the Uniform Fire Code, Appendix IIA. Plant materials in Brush Management Zones One and Two will be selected to visually blend with the existing hillside vegetation and no invasive species shall be used.

APPROVED by the Council of The City of San Diego on September 8, 1998 by Resolution No. R-290668.

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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.

B.R.E. Properties, Inc.
a Maryland corporation
Owner/Permittee

By _____

By _____

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

10/22/98

6/7/99 COR.COPY

A:\PERMIT 96\P96-7614.WPD