

RESOLUTION NUMBER R-295027

ADOPTED ON JUNE 19, 2001

WHEREAS, Black Mountain Ranch Limited Partnership, Owner/Permittee, filed an application with the City of San Diego for Planned Residential Development [PRD] Permit No. 99-1054 to construct a 134 single-family residential development known as the East Clusters at Black Mountain Ranch project, located in the eastern section of the Black Mountain Ranch Subarea, and legally described as Parcels 1, 2, 6 and Parcel B of Parcel Map 18504, in the Black Mountain Ranch Subarea Plan area, in the AR-1-1 zone (previously referred to as the A-1-10 zone) which is proposed to be rezoned to the RS-1-8 and RS-1-14 zones (previously referred to as the R1-40000 and R1-5000 zones, respectively); and

WHEREAS, on June 7, 2001, the Planning Commission of the City of San Diego considered PRD Permit No. 99-1054, and pursuant to Resolution No. 3147-2-PC voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on June 19, 2001, 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 PRD Permit No. 99-1054:

**I. PLANNED RESIDENTIAL DEVELOPMENT FINDINGS, SAN DIEGO MUNICIPAL CODE SECTION 101.0901**

**A. The proposed use will fulfill a community need and will not adversely affect the City's Progress Guide and General Plan or the adopted community plan.**

The East Clusters project is located in the eastern section of the 5,400 acre Black Mountain Ranch Subarea. The project fulfills a community need by providing needed housing in the City of San Diego, as well as housing for low-income households as required under the North City Future Urbanizing Area Framework Plan, and the Black Mountain Ranch Subarea Plan. The Black Mountain Ranch Subarea Plan designates this site for very-low and low density residential development, and all of the areas surrounding the project site have been approved for residential and open space uses. The East Clusters project implements the goals and policies of the Black Mountain Ranch Subarea Plan by creating a planned residential development that combines a predominantly residential community with an extensive open space, park, and recreation system. The proposed development areas have been located to minimize grading and respect environmentally significant areas, and most of the areas surrounding the project are Multiple Habitat Planning Area [MHPA] Open Space areas dedicated pursuant to the previously approved vesting tentative map. The proposed East Clusters project has been designed in harmony with the Black Mountain Ranch Subarea Plan, and it implements the plans, goals and policies of the Subarea Plan, therefore will not adversely affect the Subarea plan.

**B. The proposed use 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 properties in the vicinity.**

The proposed project, together with surrounding land development (mass grading design, provision of roadways, utilities, and public facilities, drainage infrastructure, preservation of open space, etc.) in the Subarea, have been designed to conform with a wide variety of the City of San Diego's codes, policies, and regulations whose primary focus is the protection of the public's health, safety, and welfare. The East Clusters project has been reviewed extensively by City staff, and is consistent with the Black Mountain Ranch Subarea Plan, the California Environmental Quality Act and the City's environmental regulations, the Multiple Species Conservation Program, landscaping and brush management policies, the Fire Department's fire protection policies, the Black Mountain Ranch Transportation Phasing Plan, water and sewer study recommendations, the City's affordable housing policies, requirements for a healthy pedestrian environment, etc. In addition, prior to the actual construction of homes on the subject property, City staff will review building permit plans against the Uniform Building Code to assure that structural, mechanical, electrical, plumbing, and access components of the project are designed to protect the public's health, safety and welfare.

**C. The proposed use will fully comply with the relevant regulations of the San Diego Municipal Code in effect for this site.**

The proposed East Clusters project has been designed to comply with all development regulations of the San Diego Municipal Code including requirements for density, bulk and scale, setbacks, height, street design, open space, grading, landscaping, brush management, lot dimensions, parking, etc. Implementation of the proposed East Clusters project will not require any deviations from the San Diego Municipal Code.

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

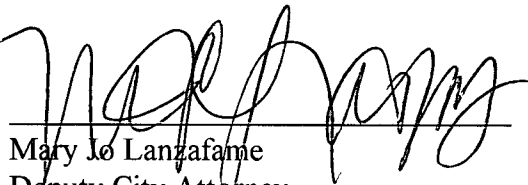
BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Planned Residential Development Permit No. 99-1054 is granted to Black Mountain Ranch Limited Partnership, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

BE IT FURTHER RESOLVED, that in addition, project approval may include a gated entry at Units 1 and 2 East Clusters at Black Mountain Ranch provided that:

1. The applicant constructs three areas for parking and easy access to the public trails located immediately adjacent to the gated entry at Unit 1 for Street A and Carmel Valley Road.
2. The applicant should also provide signs at the gated developments indicating that there is a public, regional trail system that can be accessed by foot through the development (e.g., "Regional Trail System"; "Public Access to Regional Trails").

APPROVED: CASEY GWINN, City Attorney

By

  
Mary Jo Lanzafame  
Deputy City Attorney

MJL:mdw:lc

08/29/01

Or.Dept:Clerk

R-2001-1773

Form=permitr.frm

Reviewed by Mike Westlake

**RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES DEPARTMENT  
PERMIT INTAKE, MAIL STATION 501**

**AND WHEN RECORDED MAIL TO  
CITY CLERK  
MAIL STATION 2A**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PLANNED RESIDENTIAL DEVELOPMENT PERMIT NO. 99-1054  
EAST CLUSTERS AT BLACK MOUNTAIN RANCH (MMRP)**

**CITY COUNCIL**

This Planned Residential Development Permit [PRD] is granted by the Council of the City of San Diego to Black Mountain Ranch Limited Partnership, Owner and Permittee, pursuant to the San Diego Municipal Code [SDMC]. The 137-acre site is located in the eastern section of the Black Mountain Ranch Subarea, in the AR-1-1 zone (previously referred to as the A-1-10 zone) which is proposed to be rezoned to the RS-1-8 and RS-1-14 zones (previously referred to as the R1-40000 and R1-5000 zones, respectively); and of the Black Mountain Ranch Subarea Plan. The project site is legally described as Parcel 1, 2, 6 & Parcel "B" of Parcel Map 18504.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/ Permittee to develop 134 single family residential homes, and 17 attached affordable housing units, described and identified by size, dimension, quantity, type, and location on the approved Exhibits "A," dated June 19, 2001, on file in Development Services Department. The project shall include:

- a. The development of 134 single-family homes and 17 attached affordable housing units; if the affordable housing units are developed off-site, then the four lots identified for the affordable housing would be developed as four single-family housing units for a project total of 138 units;
- b. Landscaping (planting, irrigation, and landscape related improvements);
- c. Off-street parking facilities; and
- d. 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 SDMC in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an

Extension of Time has been granted. Any such Extension of Time must meet all the SDMC 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 the Development Services Department; 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 Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 *et seq.*)

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

8. Prior to 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 19, 2001, on file in the Development Services Department, except that grading plans shall be modified to reflect the construction of a parking, staging and turn-around area for access to the public trail system adjacent to the gated entry at Unit 1 at Street A and Carmel Valley Road. No further changes, modifications, or alterations shall be made unless appropriate applications or amendments to this permit have been granted.

9. 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 entitled 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 proposed 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.

**ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

10. The permittee shall comply with the Mitigation, Monitoring, and Reporting Program [MMRP] as applicable, consistent with the Black Mountain Ranch Subarea 1 Environmental Impact Report (LDR No. 96-7902), satisfactory to the City Manager and the City Engineer. All mitigation measures as specifically outlined in the MMRP (Addendum No. 99-1054) shall be implemented for the following areas: Land Use (MHPA); Biology; Landform Alteration/Visual Quality; Hydrology/Water Quality; Historical Resources (Archaeology); Paleontology; and Noise.

**ENGINEERING REQUIREMENTS:**

11. This Planned Development Permit shall comply with the conditions of the final map for Vesting Tentative Map No. 99-1054.

**TRANSPORTATION REQUIREMENTS:**

12. Prior to the issuance of any building permit, the project shall conform to the Black Mountain Ranch/Subarea I Transportation Phasing Plan in the Public Facilities Financing Plan.

**PLANNING/DESIGN REQUIREMENTS:**

13. Gated entries or gates regulating vehicular, pedestrian, or bicycle access to Unit 1, as shown on Vesting Tentative Map No. 99-1054 may be allowed provided that Permittee construct a parking, staging and turn-around area for access to the public trail system adjacent to the gated entry at Unit 1 at Street A and Carmel Valley Road, satisfactory to the City Engineer. The trail head for the trail system shall be accessible from the parking and staging area.

- a. Permittee shall install and maintain signs at the gated developments indicating that there is a public, regional trail system that can be accessed by foot through the development. The signs shall meet the approval of the City Manager.
- b. All pedestrian openings shall not be gated and shall be permanently maintained as an open pedestrian access point.

14. All signage associated with this development shall be consistent with sign criteria established by either of the following:

- a. Approved project sign plan (Exhibit "A," dated June 19, 2001, on file in the Development Services Department); or meets the approval of the City Manager.

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

16. The use of textured or enhanced paving shall meet applicable City standards as to location, noise, and friction values.

**LANDSCAPE REQUIREMENTS:**

17. No change, modification, or alteration shall be made to the project unless appropriate application or amendment to this Permit has been granted by the City.

18. In the event that a foundation only permit is requested by the Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Concept Plan, dated June 19, 2001, on file in the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as "landscaping area".

19. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards (including planting and irrigation plans, details and specifications) 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 19, 2001, on file in the Development Services Department.

20. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way and median (if applicable) improvements shall be submitted to the City Manager for approval. Improvement plans shall identify a station point for each street tree location. Each street tree location must take into account a 40 square foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees. Location of street trees shall be identified and reserved during improvement activities and on all site plans prepared for subsequent building permit applications with actual installation taking place prior to final inspection for a specific building permit. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated June 19, 2001, on file in the Development Services Department.

21. Prior to issuance of any engineering permits for grading, construction documents for slope planting or re-vegetation and hydro-seeding of all disturbed land including irrigation shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to Permit No. 99-1054 (including Environmental conditions) and Exhibit "A", dated June 19, 2001, on file in the Development Services Department.

22. Installation of slope planting and erosion control, including seeding of all disturbed land (slopes and pads) consistent with the approved landscape and grading plans is considered to be in the public interest. The Permittee shall initiate such measures as soon as the grading has been

accomplished. Such erosion control/slope planting and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Landscape Standards.

23. Prior to final inspection, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape. A No Fee Street Tree Permit, if applicable, shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

24. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A No Fee Street Tree Permit, if applicable, shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

25. All required landscape shall be maintained in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

26. The Permittee or subsequent Owner shall be responsible for the maintenance of all street trees and landscape improvements (right-of-way and median landscaping) consistent with the Landscape Standards unless long-term maintenance of street trees, right-of-way and median landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a landscape maintenance agreement shall be submitted for review by a landscape planner.

27. If any required landscape (including existing or new planting's, hard-scape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within thirty days of damage or Certificate of Occupancy.

**BRUSH MANAGEMENT REQUIREMENTS:**

28. 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 June 19, 2001, on file in the Development Services Department.

29. Prior to issuance of any engineering permits for grading, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the property in substantial conformance with above-referenced Exhibit "A," dated June 19, 2001, on file in the Development Services Department.

30. Prior to 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 Marshall. The construction documents shall be in substantial conformance with Exhibit "A," dated June 19, 2001, on file in the Development Services Department, and shall comply with the Uniform Fire Code (SDMC section 55.0889.0201), the Landscape Standards and the Landscape Technical Manual.

31. The construction documents shall conform to the Architectural features as described in SDMC section 142.0412(d).



32. Within Zone One combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) are not permitted while non-combustible accessory structures may be approved within the designated Zone One area subject to Fire Marshall and the City Manager's approval.

33. The following shall be provided 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 the Development Services Department to discuss and outline the implementation of the Brush Management Program."

34. The Brush Management Program shall consist of three zones consistent with the Brush Management regulations of the Landscape Technical Manual as follows:

Unit No.	Lot No.	Zone One	Zone Two	Zone Three
1	1	20'-40' *	40'	30'
1	2-6	40'	40'	30'
1	7	20' *	40'	30'
1	8	40'	40'-150'	30'
1	9	40'-60'	40'-100'	30'
1	10, 11	40'	40'	30'
1	12	40'-60'	40'-100'	30'
1	13	40'-60'	40'-110'	30'
1	14	40'	40'-210'	30'
1	15-26 (none req'd)	----	-----	-----
1	27	40'	0'	0'
1	28, 29	40'	40'	30'
1	30-32 (none req'd)	-----	----	---
1	33-35	40'	40'	30'
1	36-38	40'	55'	30'
1	39	40'	40'	30'
1	40	20'-40' *	40'	30'
1	41	20' *	40'	30'
1	42-47 (none req'd)	---	----	---
1	48	30' *	40'	30'

Unit No.	Lot No.	Zone One	Zone Two	Zone Three
2	1	20' *	40'	30'
2	2-4 (none req'd)	----	----	----
2	5-8	40'	40'	30'
2	9	10'-30' *	40'-60'	30'
2	10-18	25' *	30'	40'
2	19-21	40'	40'	30'
2	22-25	30'-65'	40'-65'	30'
2	26	40'	40'	30'
2	27-28	10'-40' *	40'	30'
3	1-5	0'-25' *	30'	40'
3	6-10 (none req'd)	---	---	---
3	11-14	25' *	30'	40'
3	15-23 (none req'd)	---	---	---
3	24-29	25'-30' *	40'	30'
3	30-35 (none req'd)	---	---	---
3	36-39	40'	40'	30'
3	40	10'-40'	40'	30'
3	41	40'	40'	30'
3	42-50	40'-65'	40'-75'	30'
3	51, 52	40'	40'	30'
3	53*-62 (none req'd)	---	---	---

35. In Zones Two and Three, plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted as jointly determined by the Landscape Section and the Environmental Analysis Section of the City of San Diego.

36. Prior to final inspection for any building, the approved Brush Management Program shall be implemented.

37. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Standards.

**WATER REQUIREMENTS:**

38. Prior to the issuance of any building or grading permits, the developer shall assure, by permit and bond, the design and construction of appropriate public water facilities as identified in the accepted water studies, necessary to serve this development, in a manner satisfactory to the Director of the Water Department and the City Engineer, including, but not limited to the relocation of the Rancho Bernardo Pipeline, a 24-inch pipeline in Carmel Valley Road and Street "A", for which the City will reimburse the developer consistent with the terms negotiated with the Water Department and in accordance with City regulations and practices pertaining thereto. The agreement for work shall be executed prior to recordation of final map. Parallel water facilities shall have a minimum separation of twenty feet.

39. Prior to the issuance of any building or grading permits, the Black Mountain Reservoir and associated transmission pipelines shall be complete and operational in a manner satisfactory to the Director of the Water Department.

40. Prior to the issuance of any building permits, the developer shall install fire hydrants at locations satisfactory to the Fire Department, the Director of the Water Department, and the City Engineer. If more than two fire hydrants or thirty dwelling units are located on a dead-end main then the developer shall install adequate facilities to provide a redundant water supply, satisfactory to the Director of the Water Department.

41. The developer agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards, and practices pertaining thereto. Water facilities as shown on the approved Exhibit "A," dated June 19, 2001, on file in the Development Services Department, will require modification based on accepted water studies and current standards.

42. If any portion of the development will have gated access, then, prior to the issuance of any building permits, the developer shall provide keyed access to the Water Operations Division in a manner satisfactory to the Director of the Water Department and the City Engineer. The City will not be held responsible for any issues that may arise relative to the availability of keys.

43. Providing water for this development is dependent upon prior construction of certain water facilities in previously approved TM No. 95-0173 including, but not limited to, the completion of the Black Mountain Reservoir and associated pipelines. If facilities have not been constructed when required for this development, then the construction of certain portions of these previously approved water facilities, as required by the City Engineer, will become off-site improvements required for this development.

**WASTEWATER REQUIREMENTS:**

44. Prior to the issuance of any building permits, the developer shall assure, by permit and bond, the design and construction of all public sewer facilities necessary to serve this development.

45. The developer agrees to design all proposed public sewer facilities in accordance with established criteria in the City of San Diego's current Sewer Design Guide. Proposed facilities that do not meet the current standards shall be redesigned or private.

46. The developer shall provide evidence, satisfactory to the Director of the Metropolitan Wastewater Department, indicating that each lot will have its own sewer lateral or provide Covenants, Conditions, and Restrictions [CC&R s] for the operation and maintenance of on-site private sewer facilities that serve more than one lot.

47. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

**AFFORDABLE HOUSING REQUIREMENTS:**

48. Prior to the filing of the first final map for Units 2 and 3, subdivider shall comply with the requirements of the Black Mountain Ranch Subarea Plan for Affordable Housing [Affordable Housing Requirements] by satisfaction of the requirements of subparagraph A below:

A. Subdivider shall assure the construction and occupancy of an Affordable Housing Project consisting of seventeen units to be constructed on Lots 25 through 28, as shown on the Exhibit "A," dated June 19, 2001, on file in the Development Services Department. Subdivider shall execute an Affordable Housing Agreement, subject to the approval of the Executive Director of the Housing Authority of the City of San Diego, or designee, and the City Manager of the City of San Diego, or designee, addressing the following issues:

1. Performance Security for the construction of the Affordable Housing Project and dedication of the identified land, [Affordable Housing Site], for the construction of the Affordable Units on site, in the form of bond(s), letter(s) of credit, lien(s) and/or other forms of security acceptable to the Executive Director;

2. Approval of the timing of the construction and occupancy of the Affordable Housing Project, acceptable to the Executive Director, provided that the following timetable is incorporated into the Affordable Housing Agreement:

a. Issuance of building permits for the Affordable Project shall occur on or before the earlier of:

i. The issuance of building permits for construction of the 43rd market rate dwelling unit (number of units which represents 50 percent of market rate units); or twelve months after the issuance of the first building permit for a residential market rate unit;

ii. In no event shall the issuance of building permits for the construction of the 43rd market rate unit occur until building permits for construction of the seventeen affordable units are authorized by the City and are obtained by the subdivider. The provisions of subsection 2c, below, of this Permit are incorporated herein by reference.

b. Completion of construction of the Affordable Project shall occur upon the earlier of:

i. Twelve months after the issuance of building permit for the Affordable Housing Project as referenced in subparagraph 2a hereof; or

ii. Two years after the issuance of the first building permit for a residential market rate unit.

Further, the issuance of building permits for the construction of the 65th market rate unit (number of units which represents 75 percent) of market rate units) shall not occur until the completion of the seventeen affordable units is authorized by the City. The provisions of subsection 2c of this permit are incorporated herein by reference.

c. If individual parcels are sold initially by subdivider without first obtaining building permits for construction of market rate units, every such parcel sold shall nonetheless be included with the total number of the building permits issued, in determining when the issuance of the building permit occurs for the 43rd and 65th or greater, market rate unit.

d. Occupancy of the Affordable Housing Project shall occur not later than 180 days after the completion of construction as referenced in subparagraph 2b above.

e. For "good cause" shown to the satisfaction of the Executive Director, the dates referenced herein may be extended for one or more period(s) of up to twelve months each. Good cause shall include, but not be limited to, Acts of God, labor strikes, war, riots, financial infeasibility, acts of Federal or State governmental agencies, litigation, etc., as shall be determined by the Executive Director, in the Director's sole discretion.

3. Declaration of Covenants, Conditions, and Restrictions (CC&Rs), restricting the occupancy and affordability of the Affordable Project for a period of fifty-five years from the date of completion of the Affordable Project, which CC&Rs shall incorporate the Affordable Housing Agreement by reference, shall be recorded against the Affordable Housing Site, in a first priority position. All Affordable Units shall be for occupancy by and at rates affordable to families earning no more than 65 percent of the area median income as adjusted for family size. However, in the case of affordable rental units, the provisions set forth in California Government Code section 65915, referred to as the State Density Bonus Statute, applies and rental rates shall not exceed 30 percent of 60 percent of the area median income, as adjusted for assumed family size and utilities.

4. Additional security for the performance by the Subdivider of the Affordable Housing Requirements shall be provided by a deed of trust in favor of the Executive Director, recorded against the Affordable Housing Site, in second lien priority (junior only to the CC&Rs) assuring the timely performance of the Agreement referenced in subparagraph A, hereof. The deed(s) of trust in favor of the Housing Authority may be subordinated to construction deed(s) of trust and/or permanent financing deed(s) of trust in favor of institutional lenders, as approved by the Executive Director, in the Director's sole discretion, if deemed essential to

construction and/or operation of the Affordable Housing Project, upon such terms and conditions as the Director may impose.

5. Such other and further conditions as may be reasonably required by the Executive Director to assure satisfaction of the Affordable Housing Requirements, and such modification of existing condition(s), as may be granted by the Executive Director in the Director's sole discretion.

6. Subdivider, and their successors, heirs, and assigns shall execute such other and further documents and shall perform such acts, as shall be requested by the Executive Director and the City Manager, from time to time, as required to effectuate the provisions of Affordable Housing Agreement as contemplated by these condition(s) of approval.

OR

As an alternative to satisfying the requirements of subparagraph A above, the subdivider shall, prior to the filing of the first final map, comply with the requirements of subparagraph B as set forth below:

B. The approval by the Executive Director, or designee, and the City Manager, or designee, of the dedication (that is, the irrevocable setting aside of land for affordable housing purposes) of developable land within the Subarea and Affordable Housing Plan(s) that address, provide for and assure the construction and occupancy of seventeen Affordable Units within the Subarea on common site(s) that is not located within the boundaries of this project and that has received city approvals. Each Affordable Housing Plan must address the following issues concerning Affordable Housing to the satisfaction of the Executive Director and the City Manager or designees:

1. Siting, design, unit mix, appearance, architectural, and floor plans of the Affordable Units, as referenced on City approved tentative maps and City approved PRD exhibits for the common site(s);
2. Security for timely performance by the Subdivider of the approved Affordable Housing Plan(s) and Affordable Housing Agreement(s);
3. Execution and recordation of enforceable agreement(s), including the Affordable Housing Agreement, setting forth the requirements and timing of construction and occupancy of the Affordable Housing as referenced in the Affordable Housing Plan(s);
4. Phasing of the construction and occupancy of the Affordable Units;
5. Recordation of the CC&Rs, as approved by the Executive Director, assuring affordability and occupancy of the Affordable Units for a period of fifty-five years from the date of completion of construction of the Affordable Units to families earning not more than 65 percent of area median income and at rates affordable to these families, as adjusted for family size. However, in the case of affordable rental units, in which provisions of the State Density Bonus Statute

applies, rental rates shall not exceed 30 percent of 60 percent of the area median income as adjusted for assumed family size and utilities.

6. Security in the form of a lien with second priority, junior only to the CC&Rs, assuring dedication of the Affordable Housing Site and construction of the Affordable Units in a timely fashion, as set forth in the phasing element(s) of the Affordable Housing Plan(s). Subordination of the second lien priority security mentioned herein may be subordinated to construction and/or permanent financing deed(s) of trust in favor of institutional lender(s), as approved by the Executive Director, and as referenced in subparagraph 48.A.4 of this Permit; and

7. Such other and further measures as may be reasonably required by the Executive Director to assure satisfaction of the Affordable Housing Requirements, and such modification(s) of existing condition(s), as may be granted by the Executive Director in the Director's sole discretion.

8. Subdivider, and their successors, heirs and assigns shall execute such other and further documents and shall perform such acts, as shall be requested by the Executive Director and the City Manager and as may be required from time to time to effectuate the provisions of Affordable Housing Agreement as contemplated by these condition(s) of approval.

49. The East Clusters at Black Mountain Ranch Affordable Housing Program is on file in the Development Services Department and is incorporated herein. The provisions of the Affordable Housing Program shall not in any way modify or change any provisions of the Affordable Housing requirements as stated in the Planned Residential Development Permit. To the extent that there is any inconsistency between the two, the terms of the Permit shall prevail.

50. In addition to the affordable housing requirement for the provision of seventeen affordable units with the development of the East Clusters/Units 2 and 3, the subdivider shall pay an affordable housing in-lieu fee for the development of forty-eight very-low density units in the East Clusters/Unit 1, or enter into an In-Lieu Fee Agreement secured by a bond or other security, as approved by the Executive Director of the Housing Authority of the City of San Diego, prior to filing of the first final map.

**INFORMATION ONLY:**

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

**APPROVED** by the Council of the City of San Diego on June 19, 2001, by Resolution No. R-295027.

8/29/01

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AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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**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.

**BLACK MOUNTAIN RANCH  
LIMITED PARTNERSHIP**  
Owner/Permittee

By \_\_\_\_\_

By \_\_\_\_\_

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

8/29/01

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