

(R-2002-853)

RESOLUTION NUMBER R-295793

ADOPTED ON NOVEMBER 27, 2001

WHEREAS, Black Mountain Ranch Limited Partnership, a Maryland limited partnership, Owner/Permittee, filed an application with the City of San Diego for a Planned Development Permit/Site Development Permit to construct a mixed use development of residential, office/commercial, public facilities/services, and school uses for the North Village at Black Mountain Ranch project, located north of Rancho Penasquitos and east of Fairbanks Ranch, and legally described as Parcel 3 of Parcel Map 17995 and Parcels 19, 21, and 23 of Parcel Map 18504, in the Black Mountain Ranch Subarea Plan of the Future Urbanizing Area, in the AR-1-1 zone (which is proposed to be rezoned to ÜVOZ, RS-1-14, RX-1-2, RM-1-2, RM-1-3, RM-2-6, CC-1-3, CC-3-5, CC-4-5, CV-1-1, OP-1-1, and OR-1-1 zones); and

WHEREAS, on November 15, 2001, the Planning Commission of the City of San Diego considered Planned Development Permit/Site Development Permit [PDP/SDP] Permit No. 40-0528, and pursuant to Resolution No. 3193-PC voted to recommend City Council approval of the project; and

WHEREAS, the matter was set for public hearing on November 27, 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 it adopts the following findings with respect to PDP/SDP Permit No. 40-0528:

SAN DIEGO CITY
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SECRET

I. PLANNED DEVELOPMENT PERMIT APPROVAL FINDINGS (SAN DIEGO MUNICIPAL CODE SECTION 126.0604:

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

The North Village project is located in the northern section of the 5,400-acre Black Mountain Ranch Subarea. The Black Mountain Ranch Subarea Plan designates this site for mixed use core, core residential, peripheral residential and low-density residential to assure a variety of land uses and intensities. The North Village project implements the goals and policies of the Black Mountain Ranch Subarea Plan and the North City Future Urbanizing Area Framework Plan [Framework Plan]. The Framework Plan specifically identifies the eastern portion of the North Village as a "compact community." The land use designations created as part of the North Village project embody that intent. Consistent with the guidelines of the Framework Plan and the Black Mountain Ranch Subarea Plan, the North Village creates a compact community that contains four primary components: (1) a mixed-use community core which will contain neighborhood retail shops and commercial services, facilities to encourage transit patronage, employment and higher residential densities; (2) a core residential area which will contain a mix of housing types creating a socially diverse community which may take advantage of local commercial and employment opportunities; (3) nearby job opportunities to enhance accessibility without automobile travel; and (4) civic buildings and public spaces consisting of public plazas and walkways which encourage pedestrian activity and community interaction in support of community identity. A wide variety of housing types and affordability are presented in the North Village. 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 North Village project has been designed in harmony with the Black Mountain Ranch Subarea Plan and the Framework Plan, implements the plans, goals and policies of those plans, and therefore will not adversely affect the Black Mountain Ranch Subarea Plan.

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

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 Black Mountain Ranch 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 North Village project is consistent with the Black Mountain Ranch Subarea Plan, the Framework 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, and requirements for a healthy pedestrian environment.

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

The proposed North Village project has been designed to comply with the regulations of the San Diego Municipal Code, including requirements for density, bulk and scale, setbacks, height, street design, open space, grading, landscaping, brush management, and parking. As provided for in the Land Development Code, the North Village project includes deviations from certain regulations for setbacks, lot size, lot depth, open space, and for access from private streets/driveways on some residential lots as shown on the vesting tentative map and in the planned development permit. The fact that these deviations will result in a more desirable project is discussed in Finding E below.

D. The proposed development, when considered as a whole, will be beneficial to the community.

The North Village project will be designed and developed in accordance with the Black Mountain Ranch North Village Design Guidelines to assure that the themes, architectural character, development considerations, and other fundamental concepts of the Black Mountain Ranch Subarea Plan are fully implemented. Much of the land use pattern at Black Mountain Ranch, including the North Village project, is a consequence of comprehensive resource analysis; therefore development areas have been sited in response to a range of environmental considerations, including sensitive landforms, steep slopes, wetlands, biological habitats, archaeological sites, and watercourses. The Black Mountain Ranch Subarea Plan focuses development in two villages surrounded by significant open space, recreational amenities, and low-density development. Overall, it is a plan designed to work with the natural environment, to create pleasing neighborhoods and exceptional recreational facilities. The North Village project implements the Black Mountain Ranch Subarea Plan, and in turn the Framework Plan, and therefore will be beneficial to the community as a whole.

E. Any proposed deviations pursuant to San Diego Municipal Code section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.

The North Village project includes deviations. These deviations are consistent with Planned Development/Site Development Permit objectives in that the overall density of development conforms to the underlying zone. The proposed deviations permit a fine-grained mix of housing types achieved by providing flexibility and variety in the lot configurations. Deviations are required to mix in large and small lots for variety and to create a pedestrian-friendly

environment, and to allow lots to be configured in a way that responds to the unique topographic, geometric, access, habitat and regulatory constraints on the site. Therefore, the proposed deviations will result in a more desirable project than would otherwise be achieved if designed in strict conformance with the underlying development regulations.

II. SITE DEVELOPMENT PERMIT APPROVAL FINDINGS (SAN DIEGO MUNICIPAL CODE SECTION 126.0504:

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

The North Village project is located in the northern section of the 5,400-acre Black Mountain Ranch Subarea. The Black Mountain Ranch Subarea Plan designates this site for mixed-use core, core residential, peripheral residential, and low-density residential to assure a variety of land uses and intensities. The North Village project implements the goals and policies of the Black Mountain Ranch Subarea Plan and the Framework Plan. The Framework Plan specifically identifies the eastern portion of the North Village as a "compact community." The land use designations created as part of the North Village project embody that intent. Consistent with the guidelines of the Framework Plan and the Black Mountain Ranch Subarea Plan, the North Village creates a compact community that contains four primary components: (1) a mixed-use community core which will contain neighborhood retail shops and commercial services, facilities to encourage transit patronage, employment and higher residential densities; (2) a core residential area which will contain a mix of housing types creating a socially diverse community which may take advantage of local commercial and employment opportunities; (3) nearby job opportunities to enhance accessibility without automobile travel; and (4) civic buildings and public spaces consisting of public plazas and walkways which encourage pedestrian activity and community interaction in support of community identity. A wide variety of housing types and affordability are presented in the North Village. The proposed development areas have been located to minimize grading and respect environmentally significant areas, including those areas surrounding the project are Multiple Habitat Planning Area [MHPA] Open Space areas dedicated pursuant to the previously approved vesting tentative map. The proposed North Village project has been designed in harmony with the Black Mountain Ranch Subarea Plan, MSCP Subarea Plan and the Framework Plan, implements the plans, goals and policies of those plans, and therefore will not adversely affect the Black Mountain Ranch Subarea Plan.

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

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 North Village project is consistent with the Black Mountain



Ranch Subarea Plan, the Framework 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, and requirements for a healthy pedestrian environment.

C. The proposed development will comply with the regulations of the Land Development Code.

The proposed North Village project has been designed to comply with the regulations of the San Diego Municipal Code, including requirements for density, bulk and scale, setbacks, height, street design, open space, grading, landscaping, brush management, and parking. As provided for in the Land Development Code, the North Village project includes deviations from certain regulations for setbacks, lot size, lot depth, open space, and for access from private streets/driveways on some residential lots as shown on the vesting tentative map and in the planned development permit. These deviations will result in a more desirable project and are required to implement the plans, policies and goals of the Framework Plan and the Black Mountain Ranch Subarea Plan.

III. SITE DEVELOPMENT PERMIT - SUPPLEMENTAL APPROVAL FINDINGS - ENVIRONMENTALLY SENSITIVE (SAN DIEGO MUNICIPAL CODE SECTION 126.0504(B):

A. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.

The North Village project has been designed to work with the natural environment, to create pleasing neighborhoods and exceptional recreational facilities. It is at a location and in a scale consistent with the Black Mountain Ranch Subarea Plan. The North Village project contributes to an open space system that promotes regional resource protection and provides a critical connection to adjacent active community and neighborhood parks. The project is designed to maintain natural resources such as mature stands of native vegetation, seasonal stream courses, wetlands and significant landforms; to provide a critical corridor for the regional MSCP open space system and to link open space areas with interconnected trails to provide opportunities for recreation, education, and visual relief. The North Village project includes a central open space corridor of land in the "knot" of the bow tie area. This is a north-south link from the extensive habitat preserve system of Subarea I to open space lands to the north and functions as a central node providing transition between the compact community to the east and the less dense area to the west. The North Village project also includes an open space corridor extending westerly of the Central Open Space Link connecting to the open space system in Lusardi Canyon, which will

contain a hiking/biking/equestrian trail system which connects to the on-site and ultimately off-site regional trail system.

B. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

The North Village project will minimize the alteration of natural land forms and will not result in undue risk from geologic or erosional forces, flood hazards, or fire hazards. Mitigation measures with respect to land form alteration and site design that effect visual quality and community character such as sensitive grading techniques, landscaping, site planning for individual lots and border fencing have been incorporated into the project. The grading along the edges of the finger ridges of the North Village maintains the original shape and form of the ridges and enhanced landscaping will restore native plantings to the graded slope areas and will be extended and undulated below the graded areas to better tie in with undisturbed areas. The use of sensitive grading techniques such as contouring, variable slope aspect, blending at transitions to natural slopes and slope rounding has been incorporated into the proposed project. Slopes follow the underlying form of the terrain in plan view and straight-sided linear or flat planar surfaces have been avoided. Where manufactured slopes meet natural slopes, the contours have been blended to form a more naturally appearing undulating slope surface. In addition, enhanced landscaping is proposed which uses native trees, shrubs and ground cover in varying densities and blending with the undisturbed terrain adjacent to provide natural appearing transitions. The North Village project will be subject to the requirements for erosion control in the City's Grading Ordinance and will comply with the federal Clean Water Act through compliance with the requirements of the State Water Resources Control Board's National Pollutant Discharge Elimination System [NPDES] General Permit No. CA2000002. The North Village will have a series of detention basins to control runoff.

C. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

The North Village project would not conflict with habitat function, configuration or long-term viability of adjacent environmentally sensitive lands, nor would it cause edge effects. Direct access to public open space will be prohibited from individual residential lots in order to minimize impacts to sensitive lands and to promote the objectives of the City of San Diego's MSCP Subarea Plan. Land Use Adjacency guidelines are incorporated into the North Village Design Guidelines, including provisions for barrier fencing and plantings for access control, lighting restrictions, and appropriate native landscaping. Temporary noise impacts from construction on potential breeding gnatcatchers are also restricted during the breeding season. Additionally, all manufactured slopes adjacent to undisturbed non-MHPA open space will be revegetated with native species as further specific in the Landscape Concept Plan.

D. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program [MSCP] Subarea Plan.

Approximately 1,915 acres of Black Mountain Ranch lie within the City of San Diego MHPA Northern Area. The North Village project was included in the approved negotiated project list of the City's MSCP Subarea Plan and is therefore consistent with the MSCP MHPA. The design implements the management directives and goals contained in the Subarea Plan. The North Village Design Guidelines incorporate explicitly the land use adjacency guidelines for areas adjacent to the MHPA.

E. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

The North Village project will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The North Village project is located several miles from the public beaches and the local shorelines; therefore, it is unlikely that on-site development will contribute to erosion of the public beaches or adversely impact the local shoreline sand supply. Moreover, the North Village project includes a series of detention basins to control runoff and surface runoff and drainage from the site is conveyed by curb and gutter to inlets, and then via pipes to desilting/filtration basins. These detention/water quality infiltration basins will reduce water runoff velocities to the extent water runoff might contribute to erosion of public beaches or adversely impact local shoreline sand supply.

F. 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.

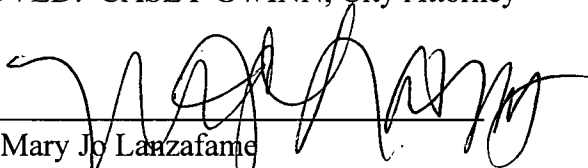
Project-specific mitigation will be required for impacts to Land Use, Biological Resources, Hydrology/Water Quality, Landform Alteration/Visual Quality, Historical Resources (Archaeology), Paleontological Resources and Noise resulting from project implementation and in accordance with the Black Mountain Ranch Subarea I Environmental Impact Report [EIR] and the Mitigation Monitoring and Reporting Program developed as a part of that EIR. All mitigation is consistent with that identified for the Subarea I Plan EIR (LDR No. 96-7902). Thus, all mitigation reasonably related to and calculated to alleviate negative impacts created by the proposed development has been or will be incorporated into the conditions of the Development Permits.

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 Development Permit/Site Development Permit No. 40-0528 is granted to Black Mountain Ranch Limited Partnership, a Maryland limited partnership, 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


Mary Jo Lanzafame
Deputy City Attorney

MJL:lc

02/22/02

Or.Dept:Clerk

R-2002-853

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Reviewed by Vicky Gallagher

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 DEVELOPMENT PERMIT/SITE DEVELOPMENT PERMIT NO. 40-0528
(MMRP)
NORTH VILLAGE AT BLACK MOUNTAIN RANCH
CITY COUNCIL

This Planned Development Permit/Site Development Permit No. 40-0528 is granted by the Council of the City of San Diego to Black Mountain Ranch Limited Partnership, a Maryland limited partnership, Owner/Permittee, pursuant to the San Diego Municipal Code [SDMC]. The 642 acre project site is located north of Rancho Penasquitos and east of Fairbanks Ranch in the Black Mountain Ranch Subarea Plan of the Future Urbanizing Area, and is currently zoned AR-1-1 (proposed rezone of the project site to include the UVOZ, RS-1-14, RX-1-2, RM-1-2, RM-1-3, RM-2-6, CC-1-3, CC-3-5, CC-4-5, CV-1-1, OP-1-1, and OR-1-1 zones). The project site is legally described as Parcel 3 of Parcel Map 17995 and Parcels 19, 21, and 23 of Parcel Map 18504.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to allow a mixed use development of residential, office/commercial, public facilities/services, and school uses at the North Village at Black Mountain Ranch. Owner/Permittee has entered into a First Amendment to Second Amended and Restated Development Agreement with the City that vests certain rights, rules, regulations, and policies for a period of twenty years, as provided for in Paragraph 5.1 of that Development Agreement. In the event of a conflict between the conditions of this permit and the terms of the Development Agreement, the terms of the Development Agreement will prevail." The 642 acre project site is located north of Rancho Penasquitos and east of Fairbanks Ranch, and is currently zoned AR-1-1. The project proposes the rezone of the project site to include the UVOZ, RS-1-14, RX-1-2, RM-1-2, RM-1-3, RM-2-6, CC-1-3, CC-3-5, CC-4-5, CV-1-1, OP-1-1, and OR-1-1 zones. The project propose the development of single family and multi-family residences, and includes affordable housing units, described as, and identified by size, dimension, quantity, type and location on the approved Exhibit "A," dated November 27, 2001, on file in the Development Services Department. The facility shall include:

- a. A mixed use development consisting of 2,783 dwelling units (1,705 single-family and 1,078 multi-family residences), including 469 affordable housing units, plus commercial, employment, and public services developments to create an urban village;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking facilities;
- d. A 5.27 acre public neighborhood park;
- e. A 22.14 acre middle school site;
- f. A 10.39 acre elementary school site;
- g. Eight (8) private parks totaling 24.2 acres; and
- h. 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 Land Development Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted, or as otherwise provided by the Development Agreement. Any such Extension of Time must meet all the Municipal/Land Development 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 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 Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 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 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.
8. At all bus stops within the project area, if any, the applicant shall be responsible for installing sidewalk improvements where needed to comply with American with Disability Act (ADA) requirements and in accordance with standards contained in the City of San Diego Street Design Manual.
9. Before issuance of any building or grading permits, complete grading and working drawings for that portion of the property for which building permits are sought shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated November 27, 2001, on file in the Development Services Department. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.
10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the new permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed permit and the condition(s) contained therein.

11. Prior to issuance of any grading permits for this project, a final subdivision map shall be recorded on the subject property, unless an advance grading permit is approved by the City Manager or a grading permit for all or a portion of the subject property is approved in connection with the recordation of a final map on a portion of the subject property.

12. Rezoning of the subject property shall become effective with recordation of the corresponding final subdivision map for the project site, or when the ordinance becomes effective.

13. This permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase (per the approved Exhibit "A," dated November 27, 2001, on file in the Development Services Department).

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

14. The issuance of this permit by the City of San Diego does not authorize the Permittee 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 applicant shall comply with the Mitigation, Monitoring and Reporting Program [MMRP] as specified in Addendum LDR No. 40-0528 to Environmental Impact Report [EIR], LDR No. 96-7902, satisfactory to the City Manager and the City Engineer. Prior to issuance of the first grading permit and/or recordation of the first final map and/or issuance of building permit, as described in the EIR, all mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Land Use (MHPA/Trails/Central Open Space);
- Biological Resources;
- Land Form Alteration/Visual Quality;
- Hydrology/Water Quality;
- Historical Resources;
- Paleontological Resources;
- Noise.

PLANNING/DESIGN REQUIREMENTS:

17. Parking spaces shall comply at all times with requirements of the Municipal/Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

18. There shall be compliance with the design criteria of the adopted Black Mountain Ranch North Village Design Guidelines 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 Design Guidelines (including exhibits) of this permit and a regulation of the underlying zone, the Design Guidelines shall prevail. Should a condition provide for a deviation or variance from the regulations, that condition will supercede the Design Guidelines.

19. 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.

20. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the design guidelines and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific criteria of the design guidelines.

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

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

23. No building additions, including patio covers, shall be permitted unless approved by the homeowners association and the Development Services Department Director. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

24. 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 November 27, 2001, on file in the Development Services Department); or
- b. Citywide sign regulations.

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

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

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

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

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

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

31. 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.

32. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (SDMC regulations) 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 November 27, 2001, on file in the Development Services Department.

LONG RANGE PLANNING REQUIREMENTS:

33. Gated entries may be permitted only at the locations identified on Exhibit "A" (Unit 4, Unit 13, and Unit 16), dated November 27, 2001, on file in the Development Services Department. An amendment to the Planned Development Permit, processed in accordance with a Decision Process Four, shall be required if additional gated entries are requested.

34. The pedestrian/bicycle entrance of gated entries shall provide permanently open public access. No gates may be located at pedestrian/bicycle entries and signs shall be provided that state the public is welcome to walk or bike through the neighborhood.

35. Any request to modify the neo-traditional/modified grid pattern of the streets and drives identified on Exhibit "A," dated November 27, 2001, on file in the Development Services Department, that results in pattern that is less neo-traditional, shall be required to process an amendment to the Planned Development Permit. Such an amendment shall be processed in accordance with a Decision Process Four.

36. All development shall be subject to the approved Black Mountain Ranch North Village Community Design Guidelines dated November 27, 2001, on file in the Development Services Department.

LANDSCAPE REQUIREMENTS:

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

38. In the event that a foundation only permit is requested by the Owner/Permittee, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Concept Plan, dated November 27, 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."

39. 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 for that portion of the project for which construction permits are being issued. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated November 27, 2001, on file in the Development Services Department.

40. Prior to issuance of any construction permit for parking structures, the Permittee shall submit on the planting and irrigation plans a signed statement by a Registered Structural Engineer indicating that supporting structures are designed to accommodate the necessary structural loads and associated planting and irrigation.

41. 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 November 27, 2001, on file in the Development Services Department.

42. Prior to issuance of any engineering permits for grading, construction documents for slope planting or revegetation 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, for that portion of the property for which engineering permits are being requested. All plans shall be in substantial conformance to Permit No. 40-0528 (including Environmental conditions) and Exhibit "A," dated November 27, 2001, on file in the Development Services Department.

43. 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 Technical Manual.

44. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections for that portion of the property for which certificates of Occupancy are being issued. A No Fee Street Tree Permit, if applicable, shall be obtained for the installation, establishment and on-going maintenance of all street trees.

45. 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.

46. The Owner/Permittee shall be responsible for the maintenance of all street trees and landscape improvements (right-of-way and median landscaping) consistent with the Landscape Technical Manual 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.

47. If any required landscape (including existing or new planting, 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 30 days of damage or Certificate of Occupancy.

BRUSH MANAGEMENT PROGRAM:

48. 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 November 27, 2001, on file in the Development Services Department.

- a. 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 Exhibit "A," dated November 27, 2001, on file in the Development Services Department.

- b. Prior to issuance of any building permits, a complete set of brush management construction documents for that portion of property for which building permits are being issued shall be submitted for approval to the City Manager and the Fire Marshall. The construction documents shall be in conformance with Exhibit "A," dated November 27, 2001, on file in the Development Services Department, and shall comply with the Uniform Fire Code (SDMC § 55.0889.0201), and Section Six of the Landscape Technical Manual.
- c. The Brush Management Program shall consist of three zones consistent with the Brush Management regulations of the Landscape Technical Manual.

All lots are located East of I-805	<u>Zone One</u>	<u>Zone Two</u>	<u>Zone Three</u>
	30'	40'	40'

- d. The construction documents shall conform to the Architectural features as described in Section 6.6 of the Landscape Technical Manual.
- e. Within Zone One, combustible accessory structures (including but not limited to decks, trellises, gazebos, play structures, etc.) are not permitted. Non-combustible accessory structures may be approved within the designated Zone One area subject to Fire Marshall and the City Manager's approval.
- 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 the Planning and Development Review Department to discuss and outline the implementation of the Brush Management Program."
- g. In zones One, 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, the Environmental Analysis Section, and the Black Mountain Ranch North Villages Design Guidelines.

49. Prior to final inspection and issuance of any Certificate of Occupancy for any building, the approved Brush Management Program for that portion of the property for which Certificates of Occupancy are being issued shall be implemented.

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

ENGINEERING REQUIREMENTS:

51. The Planned Development Permit/Site Development Permit/Rezone shall comply with the conditions of the Vesting Tentative Map No. 40-0528.

TRANSPORTATION REQUIREMENTS:

52. The proposed project shall conform to the Black Mountain Ranch/Subarea I Transportation Phasing Plan in the Public Facilities Financing Plan.

WASTEWATER REQUIREMENTS:

53. 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.

54. 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.

55. The developer shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot will have its own sewer lateral or provide Covenants, Conditions and Restrictions [CC&Rs] for the operation and maintenance of private sewer facilities, including private pump stations and force mains, that serve more than one lot.

56. 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.

WATER REQUIREMENTS:

57. Prior to the issuance of any building permits, the developer shall assure, by permit and bond, the design and construction of appropriate public potable water facilities as identified in accepted water studies, necessary to serve this development, in a manner satisfactory to the Water Department Director and the City Engineer, maintaining a redundant potable water supply throughout the phasing of construction. Public potable water facilities not analyzed shall have a minimum diameter of 12 inches.

58. Prior to the issuance of any building permit, the developer shall assure, by permit and bond, the design and construction of reclaimed water facilities, identified in the "City of San Diego Beneficial Reuse Study" by Powell and accepted site specific studies, in a manner satisfactory to the Water Department Director and the City Engineer.

59. The developer shall install encroachment water services, to serve each lot with less than forty (40) feet of frontage containing a driveway curb cut, on an improved vehicular right-of-way or master meter assemblies to serve multiple lots, in a manner satisfactory to the Water Department Director and the City Engineer. All water services shall be installed behind full height curb and outside of any vehicular travel way including driveways.

60. Prior to the issuance of any building permits, the developer shall provide CC&Rs for the operation and maintenance of all private water facilities that serve or traverse more than a single lot.

61. Prior to the issuance of any building permits, the developer shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department Director, and the City Engineer. Fire hydrants within easements having no curbs or rolled curbs shall have protective posts per SDW-102.

62. Prior to the issuance of any building or engineering permits, the developer shall grant adequate water easements over all public water facilities that are not located within fully improved public rights-of-way, satisfactory to the Water Department Director and the City Engineer. Easements, as shown on approved Exhibit "A," dated November 27, 2001, on file in the Development Services Department, will require modification based on standards and final engineering.

63. Prior to the issuance of any building permits, the developer shall process encroachment maintenance and removal agreements for all acceptable encroachments of structures or landscaping into any easement. No structures or landscaping of any kind shall be installed in or over any vehicular access roadway.

64. If on site water facilities are to be public and if it is a gated community, 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 Water Department Director. The City will not be held responsible for any issues that may arise relative to the availability of keys.

65. 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. Parallel potable water mains shall have a minimum separation of 10 feet and be located a minimum of 4 feet from face of curb to centerline of pipe.

AFFORDABLE HOUSING REQUIREMENTS:

66. Prior to the filing of the first final map within North Village at Black Mountain Ranch the Permittee shall:

- A. Enter into a Master Affordable Agreement with the City and the Housing Authority of the City of San Diego detailing the timing of the construction and occupancy of the four hundred sixty-nine (469) affordable units.
- B. Execute and record, a Declaration of Covenants, Conditions and Restrictions [the Declaration] assuring affordability of such affordable units for a period of fifty-five (55) years measured from the date of the timely initial occupancy of the units, as an encumbrance against the first of several Affordable Housing site(s), to be located within the Black Mountain Ranch planning area, in accordance with the terms and conditions of the Affordable Housing Program. The Declaration shall be recorded in first lien priority against the Affordable Housing site(s).
- C. Execute and record a deed of trust against the Affordable Housing site assuring timely compliance with the Master Affordable Agreement and the Declaration, in second lien priority, junior only to the Declaration.
- D. Post a bond or bonds, in favor of the Authority for the construction of all offsite improvements necessary to access and serve the Affordable Housing site with all necessary utilities.
- E. Post a bond or bonds to assure the timely construction of the first twenty-five (25) or larger increment of affordable housing units.
- F. After the filing of the first final map, the Permittee shall periodically post additional security to assure the timely construction and occupancy of the remaining affordable housing units in accordance with the terms of the approved Affordable Housing Program, in increments of not less than twenty-five (25) units, each.
- G. The terms and conditions of the Master Affordable Housing Agreement shall be as approved by the Executive Director of the Housing Authority and its General Counsel and shall include the following provisions:
 - (1) Performance Security as referenced above in the form of bonds, letters of credit, and/or other security acceptable to the Executive Director and its General Counsel;
 - (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 Master Affordable Agreement:

- a. Affordable Housing Permit(s) as required in the Applicable Threshold and/or Sub Threshold (referred to as "Bonding Thresholds" in the Black Mountain Ranch Phase II Affordable Housing Program) shall be obtained not more than five (5) years after obtaining a building permit for a market rate unit within the applicable Sub Threshold.
- (3) Completion of the construction of the affordable units for each Threshold and/or subthreshold shall occur upon the earlier of:
- a. Twelve month(s) after the issuance of an affordable housing permit for twenty-five (25) units or less; eighteen (18) months after the issuance of an affordable housing permit for less than fifty (50) units but more than twenty-five (25) units; and twenty-four (24) months after the issuance of an affordable housing permit for more than fifty (50) units; or
 - b. In the case of issuance of an affordable housing permit for twenty-five (25) units or less, six (6) years after the issuance of the first market rate unit building permit within the applicable subthreshold.
 - c. Further, no market rate building permits may be issued and/or further discretionary permits processed during any times that the Subdivider is in default under the terms of the Master Affordable Agreement, the Declaration, the Affordable Housing Program and/or these conditions of approval.
- (4) Occupancy of the affordable units (measured by the time that 90% of the units are occupied by qualified tenants) shall occur not later than one hundred eighty (180) days after the timely completion of the affordable units as referenced above.
- H. The Permittee shall enter into additional Master Affordable Agreements, execute and record additional Declarations, Deeds of Trust, shall post the necessary offsite and onsite security to assure the timely construction and occupancy of all 469 affordable units referenced in the Affordable Housing Program for the entirety of Black Mountain Ranch's ownership within Black Mountain Ranch and shall designate additional affordable housing site(s) at the times referenced in the Program. Time is of the essence. The documentation for such agreements and bonds shall be as referenced in Paragraph G of these conditions and as provided for in the Program.

- I. The documentation concerning the affordable housing referenced in paragraphs G and H above shall also contain the following additional provisions:
- (1) A provision for the extension of time period(s) referenced in these conditions and in the agreements, by the Executive Director of the Authority in consultation with the City Manager for "Good Cause" shown as defined in the Affordable Housing Program.
 - (2) A provision for the subordination of the deed(s) of trust in favor of the Authority to construction and/or permanent financing deed(s) of trust in favor of institutional lenders, as approved by the Executive Director, in her sole discretion, if deemed essential to financing of the affordable housing, upon such terms as said Executive Director shall require.
 - (3) Such other and further conditions as shall be reasonably required, in the opinion of the Executive Director to assure satisfaction of the affordable housing requirements as referenced in the Affordable Housing Program and in these conditions of approval.
 - (4) The successors, heirs and assigns of the Permittee shall enter into and execute such other and further documents as the Executive Director shall require, as from time to time, may be needed to effectuate the affordable housing requirements of these conditions and the Affordable Housing Program.
 - (5) The Declaration shall provide for the siting, mix and architectural nature of the affordable housing on each affordable housing site.
 - (6) The documents shall restrict the occupancy and rents paid by the eligible tenants in accordance with the provisions of the Affordable Housing Program, to households earning not more than 65 percent of the Area Median Income, as adjusted for household size and, with the utilization of the Density Bonus, the rental rates shall be affordable at monthly rates that do not exceed 30 percent of 60 percent of Area Median Income, as adjusted for assumed household size and utilities.
 - (7) The documents shall provide such other and further requirements as are referenced in the Affordable Housing Program.

METROPOLITAN TRANSIT DISTRICT BOARD [MTDB] REQUIREMENTS:

67. The applicant shall submit engineering design drawings for the Transit Center to MTDB for review and approval prior to recordation of the final map containing the Transit Center.

INFORMATION ONLY

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit/tentative map, may protest the imposition within 90 days of the approval of this development permit/tentative map 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 November 27, 2001, by Resolution No. R-295793.

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.


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

By _____

By _____

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

2/22/02
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