

RESOLUTION NUMBER R-298380

ADOPTED ON SEPTEMBER 16, 2003

WHEREAS, Dr. Gerald Handler, Owner/Permittee, filed an application with the City of San Diego for a permit to develop thirteen lots consisting of nine commercial lots (Lots 1-8 and 12) on 32.1 acres; three open space lots (Lots 9-10 and 13), and construction of a private underground sewer pump station on 0.4 acres of land at the northeast corner of the site (Lot 11), including preservation of the 1.3-acre wildlife corridor and Multiple Habitat Planning Area [MHPA] in the northeast corner of the site adjacent to the existing 6-foot wildlife underground tunnel at Otay Mesa Road and Corporate Center Drive, including four acres designated as open space to protect the MHPA on the southern boundary of the site, and an additional six acres on the eastern boundary of the project site designated as open space and includes a fenced preserve for 22 existing vernal pools and one road pool located in the southeast corner of the property (as described in and by reference to the approved Exhibit "A," and corresponding conditions of approval for the associated Permit No. 8163), on portions of a vacant 45.5-acres, known as the Otay Mesa East - Pts No. 3159 project, located in the 6600 block of Otay Mesa Road, and legally described as the Northeast Quarter of the Northwest Quarter of Section 32, Township 18 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to the Official Plat thereof; the West Quarter of the Northwest Quarter of Section 32, Township 18 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to the Official Plat thereof, in the AR-1-1

zone, which is proposed to be rezoned to the OMDD-C zone; and

WHEREAS, on July 17, 2003, the Planning Commission of the City of San Diego considered Resource Protection Ordinance Permit No. 18163 and, pursuant to Resolution No. 3395-PC, voted to approve the Permit; and

WHEREAS, the matter was set for public hearing on September 16, 2003, 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 Resource Protection Ordinance Permit No. 8163, dated September 16, 2003:

I. RESOURCE PROTECTION ORDINANCE

A. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan. The 45.5-acre vacant site is located in the 6600 block of Otay Mesa Road between Avenue of Industry and Harvest Road in the Otay Mesa Community Planning area. The project site is zoned OMDD-C and the land use designation in the Otay Mesa Community Plan is Specialized Commercial. The project proposes to develop the vacant site into 13 lots consisting of 9 commercial lots (Lots 1-8 and 12); 3 open space lots (Lots 9-10 and 13) and construction of a private underground sewer pump station (Lot 11). The proposed development is consistent with the City of San Diego's Progress Guide and General Plan commercial land use designation for the site and will therefore not adversely affect it.

B. The proposed development will conform to the community plan for the area and any other applicable plans, policies and ordinances. Commercial development of the vacant 45.5-acre site has been determined to be in compliance with the Otay Mesa Community Plan which designates the site for Specialized Commercial, and all other applicable plans, policies and ordinances in affect for the site.

C. The proposed development will be sited, designed, constructed and maintained to minimize, if not preclude, adverse impacts on environmentally sensitive lands. Mitigated Negative Declaration [MND] No. 99-0555 has been prepared

for this project in accordance with the California Environmental Act [CEQA] Guidelines. A Mitigation, Monitoring and Reporting Program [MMRP] has been prepared and will be implemented to reduce all potential impacts to below a level of significance. The MMRP addresses the issue areas of historic resources (archaeology), water quality, paleontological resources, transportation and biological resources.

A Resource Protection Ordinance [RPO] Permit is required because the project was submitted prior to December 31, 1999, when the Old Code was in effect for the site. The project includes nine commercial lots on 32.1 acres, detention basins on each lot and construction of a private underground sewer pump station on 0.4 acres of land in the northeast corner of the site.

Included in the project proposal is the preservation of the 1.3-acre wildlife corridor and MHPA in the northeast corner of the property adjacent to the existing 6-foot wildlife underground tunnel at Otay Mesa Road and Corporate Center Drive would be protected by an existing fence to be painted black and screened with a continuous hedge of native plant materials. Four acres will be designated as open space to protect the MHPA on the southern boundary of the site. An additional six acres of land would be designated as open space on the eastern boundary of the project site and includes a fenced preserve for twenty-two existing vernal pools and one road pool located in the southeast corner of the property.

Twenty-two vernal pools representing approximately 2,923 square feet of surface area and one road pool totaling approximately 290 square feet of surface area exist within the project boundary in the southwest corner of the project site. The total estimated watershed for the twenty-two pools is 2.1 acres and 0.01 acres for the road pool.

The site has been highly disturbed and its pools have little vernal pool vegetation. For this reason, the pools are considered disturbed. Vernal pool plants observed in the pools in the southeast corner of the site include woolly marbles (*Psilocapus brevissimus*), plantigo (*Plantuigo elongata*), and popcorn flower (*Plagiobothrys acanthocarpa*). All of the vernal pools are included in the six acres of open space lands on the east side of the property. A Vernal Pool Management Plan is included in Mitigated Negative Declaration to insure the protection of the Vernal Pools.

A single road pool was identified with approximately 290 square feet of potential surface area and approximately 835 square feet of watershed located in the northwestern corner of the project site. This pool is located within the impact area for the proposed project. However, the pool and watershed are also located totally within a proposed cul-de-sac right-of-way for the adjacent California Terraces, Otay Corporate Center South project. The California Terraces Vesting Tentative Map (VTM 86-1032) shows this pool within the development footprint. The Otay Corporate Center Project would dedicate and grade

the right-of-way and install underground utilities, completely removing the vernal pool and watershed. The California Terraces project has been reviewed and approved by the USFWS, ACOE and the City of San Diego. The USFWS prepared a biological opinion (BO 1-6-95-F-35) as part of an ESA Section 7 consultation with ACOE (File No. 95-2010DZ) in January, 1997. Mitigation measures were identified and implemented for project-related impacts per the BO and other project documents. Therefore, no other mitigation measures related to the road pool located in the northwest corner of the project site are required

The Traffic Impact Analysis prepared by Kimley-Horn & Associates (revised October 9, 2002) determined that the proposed project would result in significant Average Daily Trips [ADT] based impacts to segments of Otay Mesa Road and Ocean View Parkway under Near Term and Horizon Year conditions. While the project would generate a significant impact on several segments of Otay Mesa Road on an ADT under Near Term conditions, controlling intersections will be characterized by acceptable LOS during both peak hours (with the exception of Ocean View Hills Parkway/Caliente Boulevard/ Otay Mesa Road) and the overall arterial analysis shows that these segments would operate at an acceptable level of service. Accordingly, the ADT-based impacts are considered to be overstated and mitigated by the improvements to the one failing intersection. Further, the future construction of SR-905 will divert some trips from Otay Mesa Road to SR-905, restoring LOS to acceptable levels at all locations, except the segment between Caliente Boulevard and "C" Street.

On Ocean View Hills Parkway, the ADT-based impact is probably overstated because the Ocean View Hills Parkway intersections with Dennery Road and Del Sol Boulevard will have adequate LOS under all conditions and peak hours analyzed, and overall arterial analysis shows that these segments will operate at an acceptable level of service.

Water quality is affected by sedimentation caused by erosion, runoff carrying contaminants, and direct discharge of pollutants. As land is developed, or redeveloped, impervious surfaces convey an increased volume of runoff containing oils, pesticides, fertilizers, and other contaminants into adjacent watersheds. Implementation of the project would disturb 32.98 acres of land and create surface parking lots for an estimated 1,302 parking spaces. According to the City's significance thresholds for water quality impacts, any project which would construct a parking lot of fifteen or more spaces or develop a site over one acre may result in a significant water quality impact. Based on the size of the proposed site and new paved surfaces, the proposed development would result in a significant water quality impact. Therefore, a Drainage Study and a Post Construction BMP Evaluation were prepared by Kimley-Horn & Associates in October, 2002. In addition, a Water Quality Technical Report was prepared by Kimley-Horn & Associates and revised in April, 2003. These studies address pre- & post construction BMPs to be implemented as a condition of project approval.

Consequently, a National Pollution Discharge Elimination System [NPDES] permit from the State Water Resources Control Board [SWRCB] would be required to control erosion, sedimentation, runoff, point- and non-point-source pollution as a result of the proposed development. The NPDES permit requires the preparation and implementation of a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan prior to the commencement of grading activities, which incorporate BMPs into the construction and post-construction phases of the project. The SWPPP and the mitigation measures incorporated in Section V of the Mitigated Negative Declaration would mitigate potentially significant water quality impacts to below a level of significance.

Proposed landscaping will consist of new street trees along Otay Mesa Road (*Arbutus Menziesii*), a mixture of trees along the interior roads (*Calocedrus decurrens* and *Umbellularia californica*), and a mixture of flowering trees and palms at accent points within the site (*Myrica californica*, *Bauhinia blakeana*, *Lagerstroemia indica*, *Washingtonia robusta* and *Washingtonia filifera*).

Implementation of the project requires Brush Management zones to be established around the developed areas. A 40-foot strip of Zone Two brush management will occur outside the MHPA within the lot boundaries. Zone Two brush management is considered impact neutral, therefore, there would be no impacts to the MHPA. Landscaping associated with the Zone One brush management include *Bougainvillea "La Jolla"*, *Cistus Crispus*, and *Baccharis pilularis "twin oaks"*. Native plants associated with Zone Two brush management include *Ceanothus griseus horizontali*. The wildlife corridor in the northeast corner of the project site would be screened with continuous native hedge material (*Rhus integrifolia*).

D. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks and public open-space areas and will provide adequate buffer areas to protect such resources. The project includes nine commercial lots on 32.1 acres, detention basins on each lot and construction of a private underground sewer pump station on 0.4 acres of land in the northeast corner of the site. Included in the project proposal is the preservation of the 1.3-acre wildlife corridor and MHPA in the northeast corner of the property adjacent to the existing 6-foot wildlife underground tunnel at Otay Mesa Road and Corporate Center Drive would be protected by an existing fence to be painted black and screened with a continuous hedge of native plant materials. Four acres will be designated as open space to protect the MHPA on the southern boundary of the site.

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E. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards. The project site has been historically used for agricultural purposes the proposed development is designed to minimize alterations to the natural landform and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

F. Feasible measures, as defined in this section, to protect and preserve the special character or the special historical, architectural, archaeological or cultural value or the affected significant prehistoric or historic site or resource have been provided by the applicant. An archaeological survey was conducted by Gallegos and Associates in June, 2000, and a revised letter report was submitted in February, 2002. The survey determined that the project is situated within prehistoric site CA-SDI-6941. This extensive sparse lithic scatter site contains artifact concentrations (Loci A-Y) and is spread over 10,000,000 square meters. Artifact concentrations have been identified and those remaining areas of CA-SDI-6941 are part of the "Otay Smear" (sparse lithic scatter) which is literally across Otay Mesa. For the SR 905 Project, a Management Plan was prepared in lieu of testing sparse lithic scatters (Gallegos et al. 1998). This plan was accepted by the City of San Diego, CALTRANS and the State Historic Preservation Officer (SHPO). The property was previously surveyed as part of SR 905 project and no artifacts or loci of site CA-SDI- 6941 were identified within the project area. Given the poor ground visibility during the SR 905 study and as a result of working with City Staff, it has been agreed that monitoring during construction will be required. Implementation of a monitoring program in accordance with MND's Mitigation, Monitoring and Reporting Program would reduce the potential impacts to subsurface historical resources to below a level of significance.

II. OTAY MESA DEVELOPMENT DISTRICT

A. The project application is complete and conforms with all city policies, guidelines, design standards and density regulations in effect for this site. The 45.5-acre vacant site is located in the 6600 block of Otay Mesa Road between Avenue of Industry and Harvest Road in the Otay Mesa Community Planning area. The project site is zoned OMDD-C and the land use designation in the Otay Mesa Community Plan is Specialized Commercial.

The project proposes to develop the vacant site into 13 lots consisting of 9 commercial lots (Lots 1-8 and 12) on 32.1 developable acres; three open space lots (Lots 9-10 and 13), and construction of a private underground sewer pump station on 0.4 acres of land at the northeast corner of the site (Lot 11).

Included in the project proposal is the preservation of the 1.3-acre wildlife corridor and Multiple Habitat Planning Area [MHPA] in the northeast corner of the site adjacent to the existing 6-foot wildlife underground tunnel at Otay Mesa Road and Corporate Center Drive. Four acres will be designated as open space to protect the MHPA on the southern boundary of the site. An additional six acres on the eastern boundary of the project site will be designated as open space and includes a fenced preserve for twenty-two existing vernal pools and one road pool located in the southeast corner of the property.

The proposed development is consistent with the City of San Diego's Progress Guide and General Plan commercial land use designation for the site and will therefore not adversely affect it.

B. The proposed use and project design meet the general purpose and intent of the Otay Mesa Development District and the Otay Mesa Community Plan. The 45.5-acre vacant site is located in the 6600 block of Otay Mesa Road between Avenue of Industry and Harvest Road in the Otay Mesa Community Planning area. The project site is zoned OMDD-C and the land use designation in the Otay Mesa Community Plan is Specialized Commercial, therefore the proposal for commercial development meets the intent and purpose of the Otay Mesa Development District and the Otay Mesa Community Plan.

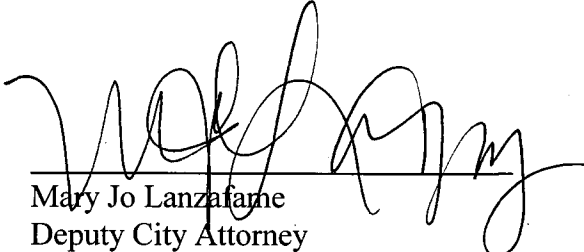
C. The proposed use, because of conditions that have been applied to it, will not be detrimental to the health, safety and general welfare of persons residing or working in the area, and will not adversely affect other property in the vicinity. Conditions of approval found in the Resource Protection Ordinance/Otay Mesa Development District Permit No. 8163 and Vesting Tentative Map No. 8182 address health, safety and general welfare issues. Compliance with applicable building, plumbing, electrical, mechanical and grading regulations will also be required at the construction phase, therefore, the proposal will not be detrimental to the health, safety and general welfare of persons residing or working in the area, and will not adversely affect other property in the vicinity.

D. The proposed use will comply with the relevant regulations of the Municipal Code in effect for this site. Commercial development of the 45.5 acres site has been determined to be in compliance with the City's General Plan, the Municipal Code, the Resource Protection Ordinance, the State Subdivision Map Act and all other applicable relevant regulations of the Municipal Code in effect for the site.

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

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Resource Protection Ordinance Permit No. 8163 is granted to Gerald Handler, 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:cdk
09/18/03
Or.Dept:Clerk
R-2004-337
Form=permitr.frm
Reviewed by Vicky Gallagher

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT

WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RESOURCE PROTECTION ORDINANCE PERMIT NUMBER 8163
OTAY MESA EAST - PTS NO. 3159
CITY COUNCIL

This Permit is granted by the City Council of the City of San Diego to Gerald Handler, Owner/Permittee, pursuant to the City of San Diego Municipal Code [SDMC] section 101.0462. The 45.5-acre site is located in the 6600 block of Otay Mesa Road in the Otay Mesa Community Planning in the OMDD-C Zone. The project site is legally described as the Northeast Quarter of the Northwest Quarter of Section 32, Township 18 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to the Official Plat thereof and the West Quarter of the Northwest Quarter of Section 32, Township 18 South, Range 1 West, San Bernardino Base and Meridian, in the County of San Diego, State of California, according to the official plat thereof.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to develop a 45.5-acre, vacant site with commercial development consistent with the OMDD-C Zone for commercial lots, described as, and identified by size, dimension, quantity, type and location on the approved Exhibit "A," dated September 16, 2003, on file in the Office of the Development Services Department. Exhibit "A" is identified as follows:

- A-1: Landscape Concept/Brush Management Plan
- A-2: Vesting Tentative Map/Grading Plan
- A-3: Existing Topography
- A-4: Project Cross-Sections

The project or facility shall include:

- a. Nine commercial lots (Lots 1-8 and 12);
- b. Three open space lots (Lots 9-10 and 13);

- c. Construction of a private underground sewer pump station on 0.4-acre located at the northeast corner of the site (Lot 11);
- d. Preservation of 1.3-acres wild of corridor;
- e. Preservation of Multiple Habitat Planning Area (MHPA) in the northeast corner of the site adjacent to the existing six-foot wildlife underground tunnel at Otay Mesa Road and Corporate Center Drive;
- f. Four acres to be designated as open space to protect the MHPA on the southern boundary of the site;
- g. Six acres on the eastern boundary of the project site to be designated as open space, including a fenced preserve for twenty-two existing vernal pools and one (1) road pool located in the southeast corner of the property;
- h. Landscaping (planting, irrigation and landscape related improvements); and
- i. 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 agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] 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 and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit A-2, dated September 16, 2003, on file in the Office of the Development Services Department. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) 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 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 the special rights which the holder of the Permit is entitled as a result of obtaining this 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.

10. Prior to issuance of any grading permits for this project, a final subdivision map shall be recorded on the subject property.

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

12. 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 September 16, 2003, on file in the Office of the Development Services Department).

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

13. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into the permit by reference or authorization for the project.

14. As conditions of Resource Protection Ordinance No.008163, the mitigation measures specified in the MMRP, and outlined in the Mitigated Negative Declaration, LDR No. 3159 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

15. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program [MMRP] as specified in the Mitigated Negative Declaration, LDR No.3159 satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas: Land Use/Biological Resources/Historical Resources (Archaeology)/Water Quality.

16. The MMRP shall require a deposit of \$3,200.00 to be collected prior to the issuance of any discretionary approval(s) to cover the City's costs associated with implementation of the MMRP.

17. A Job Order number open to the Land Development Review Division of the Development Services Department shall be required to cover the Land Development Review Division's cost associated with the implementation of the MMRP.

BRUSH MANAGEMENT PROGRAM REQUIREMENTS:

18. The Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit A-1, Brush Management Program/Landscape Development Plan, on file in the Office of the Development Services Department.
19. Prior to issuance of permits or recording of final maps, all easements or right of entry permits for the purpose of Brush Management shall be obtained.
20. Prior to issuance of any engineering permits for grading, complete Brush Management, planting and irrigation plans, details and specifications (including maintenance specifications), shall be submitted to the City Manager for approval. All plans shall indicate the brush management zones depths by dimension.
21. Prior to final inspection and issuance of any Certificate of Occupancy for any building, the approved Brush Management Program shall be implemented.
22. In all brush management zones the plant material shall be selected to visually blend with the existing vegetation. No invasive plant material shall be permitted as determined by the Landscape Section of Development Services Department.
23. The Brush Management Maintenance Program as noted on Exhibit A-1, shall be performed annually by the Permittee or subsequent Owner or until such time that another approved entity such as a project association or a Landscape Maintenance District assumes annual responsibility.
24. Provide Brush Management plants that are visually and horticulturally compatible with the native vegetation.

ENGINEERING REQUIREMENTS:

25. Grading permit, post-construction BMPs based on the Water Quality Technical Report, improvements to the right-of-way for two (2) streets, detention basins, flood water storage easements, NPDES Permit, 1911 waiver for future Otay-Mesa-wide drainage improvements, inter alia.
26. The Resource Protection Ordinance Permit No. 8163 shall comply with the conditions of the Final Map for VTM No. 8182.

LANDSCAPE REQUIREMENTS:

27. No change, modification or alteration shall be made to the project unless appropriate application or amendment of this Permit has been granted by the City. All plan specifications and notes mentioned in the conditions below shall be consistent with the SDMC, section 142.0401 and Landscape Standards, Exhibit A-1, Landscape Development Plan, Brush Management Plan, Details and Notes on file in the Office of the Development Services.
28. All required landscape plant materials shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to it's mature height and spread.
29. 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.
30. 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. A Landscape Maintenance Agreement and bond shall be entered into prior to issuance of any grading or construction permit. The agreement and bond shall be renewed each year until such time that another approved entity assumes responsibility such as a home owners association or a Landscape Maintenance District.
31. If any required landscape improvements (including existing or new planting, hardscape, landscape features, etc.) are damaged or removed during demolition or construction, they 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 and prior to any Certificate of Occupancy.
32. Prior to the issuance of any engineering permits for grading or improvement the Permittee shall complete a Maintenance Assessment District Agreement form for early confirmation.
33. 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-1, Landscape Development Plan, on file in the Office of Development Services. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as landscaping area.
34. In the event that any mass grading permit is requested by the Permittee or subsequent Owner, complete landscape construction documents for revegetation and erosion control, including an automatic permanent irrigation system, shall be submitted to the Development

Services Department, Land Development Review Section for approval. The plans shall be in substantial conformance to Exhibit A-1, on file in the office of the Development Services.

35. 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-1, Landscape Development Plan, on file in the Office of Development Services.

36. In the event that any construction permit for parking structures is requested, the Permittee or subsequent Owner 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.

37. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way improvements shall be submitted to the City Manager for approval. Improvement plans shall 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.

38. Prior to issuance of any engineering permits for private drive improvements, complete landscape construction documents for private drive improvements shall be submitted to the City Manager for approval. Improvement plans shall 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.

39. Prior to issuance of any engineering permits for grading, construction documents for slope planting (if applicable) or revegetation including hydroseeding and 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 with Exhibit A-1, (including Environmental conditions) on file in the Office of Development Service.

40. 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.

41. 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.

42. Prior to the recording of the (parcel/final map), the Permittee or subsequent Owner/Developer shall submit for review, a Landscape Maintenance Agreement for all landscape improvements within and visible from the public right-of-way . The approved Landscape Maintenance Agreement shall be recorded and bonded prior to recording of the (parcel/final map).

43. The Permittee or subsequent Owner(s) shall be responsible for the installation and maintenance of all landscape improvements consistent with the Landscape Regulation and Landscape Standards. Invasive species are prohibited from being planted adjacent to any canyon, water course, wet land or native habitats within the city limits of San Diego as noted in Section 1.3 of the Landscape Standards.

PLANNING/DESIGN REQUIREMENTS:

44. Hillsides and environmentally sensitive lands that are undisturbed or restored as a result of the development must be conserved through a deed restriction, open space easement or other restriction that will preclude any future development or grading of such lands. The restriction must be acceptable to the City Attorney and to the Development Services Director.

45. 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.

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

47. A topographical survey conforming to the provisions of the 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.

48. 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.

49. 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-1, dated September 16, 2003, on file in the Office of the Development Services Department); or
- b. Citywide sign regulations.

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

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

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

53. 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.

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

55. 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.

56. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Refuse and Recyclable Materials Storage Regulations (Land Development Code Section 142.0801) 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-1.

WASTEWATER REQUIREMENTS:

57. The developer shall construct the Otay Mesa Trunk Sewer Phase II or enter into a development agreement to pay their fair share cost of the trunk sewer in proportion to the ultimate zoned use of the property being developed, in accordance with the City's Sewer Design Guide.

58. The developer shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved tentative map will require modification based on the accepted sewer study.

59. The developer shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's sewer design guide. Proposed facilities that do not meet the current standards shall be re-designed.

60. The developer shall design and construct all proposed private sewer facilities serving more than one lot to the most current edition of the City of San Diego's sewer design guide. Improvement drawings are required for private sewer facilities serving more than one lot.

61. Prior to the issuance of any building permits, the applicant shall process and record a Notice and Agreement for each ownership being served by a private pump station/sewer facilities which serves more than one ownership, which indemnifies the City and contains an agreement that the applicant, and successors in interest, will be responsible for the operation and maintenance of the private sewer systems.

62. The developer shall obtain a building permit for any private pump station serving a condominium project or more than one lot.

63. The developer shall provide, satisfactory to the Metropolitan Wastewater Department Director, CC&R's for the operation and maintenance of on-site private sewer facilities that serve more than one lot.

64. No structures or landscaping, including private sewer facilities and enhanced paving, shall be installed in or over any easement or street right-of-way prior to the applicant obtaining an Encroachment Maintenance and Removal Agreement.

65. Providing sewer for this development is dependent upon prior construction of certain portions of the Otay Mesa Trunk Sewer Phase II . If they have not been constructed when required for this development, then the construction of certain portions of these sewer facilities, as required by the City Engineer, will become off-site improvements required for this development.

OPEN SPACE REQUIREMENTS:

66. Lots 9 and 10 shall be deeded, at no cost, to the city for open space. said lots shall be free and clear of all private encroachments, private easements, private agreements and/or liens.

67. An open space easement is required on the 40-foot deep Zone 2 for brush management across Lots 6, 7 and 8.

68. The brush management zones adjacent to Lots 6 through 8 shall be made into a separate lot and have an open space easement over Zone Two.

69. Brush management Zones 1, 2 and 3 or modified Zones 1 and 2 must be provided between Lot 8 and Lot 9 and Zone Two must have an open space easement. This will require a new lot and it is understood that Lot 9 will be reduced in size.

MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) REQUIREMENTS:

70. 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 17, 1997, and on file in the Office of the City Clerk as Document No. 00-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA; and (2) to assure Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA.

If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.

71. The applicant shall comply with the MMRP as specified in the Environmental Documentation for the "Otay Mesa East Project" (Project No. 3159, SCH No. 2003051060), satisfactory to the City Manager and the City Engineer, for the following issues areas to ensure

compliance with the MSCP and MHPA Land Use Adjacency Guidelines: Land Use, Biological Resources and Water Quality.

In addition, the following conditions shall apply:

Operational Noise: Prior to issuance of any building occupancy permits, the sewer pump station proposed adjacent to the existing Otay Mesa Road wildlife under crossing shall be constructed, to the satisfaction of the City Manager and City Engineer, to ensure that operational noise does not impact wildlife movement, including: (1) designing the facility below-ground; (2) encasing it in concrete; (3) providing perimeter berms and native screening vegetation; and (4) shielding/directing all necessary lighting away from the MHPA.

Edge Treatment: Prior to issuance of any building occupancy permits, the applicant shall construct a six-foot-high black vinyl-coated chain link fence along areas adjacent to the MHPA, including the rear of proposed Lots 6, 7 and 8, satisfactory to the City Manager and the City Engineer. The fencing shall be appropriately maintained at all times by the owner/Permittee/trustee. Any necessary future fence repairs shall be conducted in a manner which does not result in impacts to sensitive biology resource or wildlife movement.

Brush Management: Prior to recordation of the first final map and/or issuance of any grading permits, the City Manager shall verify that all brush management zone 2 is located outside the limits of the on-site vernal pool watershed areas and retained within the proposed lots.

Drainage: Prior to recordation of the first final map and/or issuance of any grading permits, the City Manager and City Engineer shall verify that on-site drainage for all lots, including proposed lot no. 8, is designed to avoid discharging into the on-site vernal pool watershed areas.

72. Prior to recordation of the first final map and/or issuance of any grading permits, the on-site MHPA shall be conserved and conveyed to the City's MHPA through either dedication in fee to the City, or placement in a conservation easement or covenant of easement, which is then recorded on the property. For brush management zone two and any proposed revegetation areas within the MHPA, a conservation easement would be appropriate. All other areas could be conveyed through any of the three above methods. Management of the on-site preserved MHPA shall be the responsibility of the Owner/Permittee/Trustee in perpetuity, unless the City accepts responsibility through dedication in fee title. *Note: Any proposed dedication of land in-fee to the City outside the MHPA would require approval from the Park and Recreation Department.

TRANSPORTATION REQUIREMENTS:

73. Prior to the recordation of first final map, subdivider shall relinquish access rights along project frontage on Otay Mesa Road, satisfactory to the City Engineer.

74. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of Street "B" with 64 feet curb to curb within 84 feet right-of-way including curb, gutter and 5-foot sidewalk within 10-foot curb to property line distance on both sides of the street with 55-foot curb radius cul-de-sac turnaround at the southern end, satisfactory to the City Engineer.
75. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of Street "B" within 200 feet of its intersection with Otay Mesa Road with 72 feet of curb to curb pavement (18-foot southbound lane, 4-foot raised center median, two 12-foot northbound left turn lanes, 12-foot northbound through lane, 14-foot northbound right turn lane) within 92 feet of right-of-way including curb, gutter and 5-foot sidewalk within 10-foot curb to property line distance on both sides of the street transiting to a 64 feet curb to curb width within 84 feet right-of-way with 55-foot curb radius cul-de-sac turnaround at the southern end within 65 feet right-of-way, satisfactory to the City Engineer.
76. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of a second left turn lane on Otay Mesa Road at its intersection with Street "B", satisfactory to the City Engineer.
77. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of an eastbound exclusive right turn lane with 500-feet of storage and proper transition on Otay Mesa Road at its intersections with "B" Street", satisfactory to the City Engineer.
78. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of private Street "A" between Street "B" and Street "C" with 50 feet of pavement within 70 feet of private general utility easement with curb, gutter and 5-foot sidewalk on both sides of the street and raised center median at both ends of the streets within 200 feet of intersection with Street "B" and Street "C", satisfactory to the City Engineer.
79. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of half width of Street "C" including 30 feet of pavement, curb, gutter and 5-foot sidewalk within 10-foot curb to property line distance with 55-foot curb radius cul-de-sac turnaround at the southern end, satisfactory to the City Engineer.
80. Prior to the recordation of the first final map, subdivider shall assure by permit and bond construction of a eastbound exclusive right turn lane with 200 feet of storage and proper transition on Otay Mesa Road at its intersection with Street "C", satisfactory to the City Engineer.
81. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of second eastbound left turn lane and one exclusive westbound right turn lane at

the intersection of Otay Mesa Road/Ocean View Hills Parkway, satisfactory to the City Engineer.

82. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of second westbound left turn lane at the intersection of Otay Mesa Road/Ocean View Hills Parkway, satisfactory to the City Engineer. Subdivider may enter into a deferred improvement agreement with City of San Diego for this improvement.

83. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of the second half (western half) of Street "C" to provide 60 feet of pavement, curb, gutter and 5-foot sidewalk within 10-foot curb to property line distance on the west side, satisfactory to the City Engineer. Subdivider may enter into a deferred improvement agreement with City of San Diego for this improvement.

84. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of a westbound left turn lane at the intersection of Otay Mesa Road/Street "C", satisfactory to the City Engineer. Subdivider may enter into a deferred improvement agreement with City of San Diego for this improvement.

85. Prior to the recordation of the first final map, subdivider shall assure by permit and bond, construction of a traffic signal at the intersection of Otay Mesa Road / Street "C", satisfactory to the City Engineer. Subdivider may enter into a deferred improvement agreement with City of San Diego for this improvement.

86. Prior to the recordation of the first final map, subdivider shall provide an Irrevocable Offer of Dedication (IOD) for half of the cul-de-sac on Lot 12 at the western end of Camino Maquiladora with 55-foot curb radius turn around within 65 feet of right-of-way, satisfactory to the City Engineer.

INFORMATION ONLY:

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development 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 by Resolution No. R-298380 on September 16, 2003.

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.

Dr. Gerald Handler
Owner/Permittee

By _____

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