

RESOLUTION NUMBER R-299668

ADOPTED ON SEPTEMBER 21, 2004

WHEREAS, M. Kevin O'Neill Construction Company, Inc., a California Limited Partnership, Owner, Affirmed Family Housing Partners-Creekside, LLC, a California Limited Liability Company, Permittee, filed an application with the City of San Diego for a site development permit to construct seven buildings containing fifty affordable housing multi-family rental units and common use, known as the Creekside Trails project, located on the south side of Coronado Avenue, (Assessor's Parcel Number 634-010-30) between Green Bay Street and Nestor Way, and legally described as Lot 9 of Nestor, in the City of San Diego, County of San Diego, State of California, according to Licensed Survey Map No. 90, filed in the Office of the County Recorder of San Diego County, in the Otay Mesa-Nestor Community Plan area, in the RM-1-1 zone and the Coastal Height Limit and Transit Overlay zones. Excepting therefrom that portion lying easterly of the westerly line of Lot 5 of said Nestor, according to Licensed Survey Map No. 90, filed in the Office of the County Recorder of San Diego County, and the southerly prolongation of said westerly line to the southerly line of said Lot 9. Also excepting therefrom that portion lying within South Bay Estates Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1005, recorded in the Office of the San Diego Recorder of San Diego County, February 20, 1981; and

WHEREAS, on June 24, 2004, the Planning Commission of the City of San Diego considered Site Development Permit [SDP] Permit No. 84104, and pursuant to Resolution No. 3529-PC voted to approve the Permit; and

WHEREAS, after approval of the above referenced project by the Planning Commission of the City of San Diego, M. Kevin O'Neill, Construction Company, Inc., Owner, transferred the property to Affirmed Family Housing Partners-Creekside, LLC, thereby making Affirmed Family Housing Partners-Creekside, LLC the new Owner of the Creekside Trails project; and

WHEREAS, Amenda B. Caniya appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, the matter was set for public hearing on September 21, 2004, 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 Site Development Permit No. 84104:

**A. SITE DEVELOPMENT PERMIT**

**1. The proposed development will not adversely affect the applicable land use plan.** The 2.78-acre site is currently designated Park on the 1997 Otay Mesa-Nestor Community Plan land use map. The designation is further defined as Park/Greenway in Appendix 4 of the Plan, "Community Facilities and Services." Prior to 1997, the site was designated Low Medium Density Residential, while other sites along Nestor Creek were designated Low or Low Medium Residential. The areas were redesignated to Park/Greenway by the 1997 Community Plan update in order to preserve and protect the integrity of the creek. However, as outlined in Topic 2b of the Plan, the Nestor Town Center, it was anticipated that housing and other private development would be located in these areas and help develop Nestor Creek as a passive linear park. The area was not intended for programmable park space and was not intended to fulfill population-based park standards.

The community plan intends that both public and private developments would contribute to establishing the Greenway. It is not uncommon to designate privately owned property for Public Park or Open Space use in land use policy documents. The community plan, recognizing that most or all of the privately owned sites may not be acquired by the City for public use, recommends strategies and guidelines for development that would implement the community's vision for Nestor Creek Greenway. Creekside Trails consciously incorporates the Nestor Creek Greenway with buildings that open to the creek, a public-access trail that traverses the site, and a Commons building and lawn space that front the creek. Through sensitive consideration and incorporation of the Nestor Town Center strategies and guidelines, the project would help

achieve the goals and recommendations of the Otay Mesa-Nestor Community Plan and a community plan amendment would not be necessary.

The proposed development of a 50-unit affordable multi-family rental housing complex on the site would be developed to be consistent with the Strategies and Guidelines of Topic 2b of the Otay Mesa - Nestor Community Plan by creating a linear park along the Nestor Creek Greenway and restoring and enhancing Nestor Creek. The project design incorporates the creek with buildings fronting the creek, along with view corridors and play areas that interact with the creek. Therefore, no adverse impacts to the applicable land use plan would occur as a result of project implementation.

**2. The proposed development will not be detrimental to the public health, safety, and welfare.** The project proposes the construction of fifty affordable rental apartments within the Otay Mesa - Nestor Community which would provide for affordable housing stock for Very Low Income (under 50 percent Area Median Income [AMI]) and Low Income (50-80 percent AMI) families.

The permit prepared for the project includes various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the San Diego Municipal Code [SDMC] in effect for this project. Such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety and general welfare of persons residing or working in the surrounding area. The project will comply with the development regulations in effect for the subject property as described in Site Development Permit No. 84104, and other regulations and guidelines pertaining to the subject property per the SDMC.

Further, the project includes mitigation measures to offset potential impacts to the environment in the areas of Biological Resources, Water Quality, Air Quality and Noise as described in Finding of No Significant Impact [FONSI]/Mitigated Negative Declaration [MND] No. 31925. The project has been designed in accordance with the Crime Prevention Through Environmental Design guidelines. In addition, the proposed development will be required to obtain Building Permits to show that all construction will comply with all applicable Building and Fire Code requirements. Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

**3. The proposed development will comply with the applicable regulations of the Land Development Code.** The proposed project conforms to the purpose and intent of the Otay Mesa - Nestor Community Plan by providing a linear park along Nestor Creek and restoring and enhancing Nestor Creek.

The project proposes deviations to the development standards of the City of San Diego Land Development Code [LDC] for parking, setbacks, and structure height. The proposal is utilizing a 25 percent Density Bonus pursuant to the SDMC Density Bonus Regulations for Affordable Housing Projects. The RM-1-1 zone allows for the development of forty residential units on the 2.78 acre site. The applicant is entitled to a 25 percent density bonus for residential development by entering into an agreement with the San Diego Housing Commission to ensure the construction and occupancy of 100 percent of the fifty rental housing units affordable at or

below 60 percent area median income. The applicant has agreed to meet that requirement and the permit has been so conditioned.

The parking requirement for this project consisting of sixteen 1-bedroom units, eighteen 2-bedroom units, and sixteen 3-bedroom units located within the Transit Overlay Zone is eighty-four vehicle parking spaces of which four spaces are accessible parking spaces, in addition to five motorcycle spaces, and twenty-four bicycle spaces. The project proposes to deviate from the parking requirements by proposing seventy-seven vehicle spaces (including four accessible spaces) where eighty-four are required. The applicant provided staff with parking surveys for six existing and comparable affordable housing developments, with peak vehicle parking ratios ranging from 0.93 spaces per unit to 1.93 spaces per unit. Of the three surveys for developments with a bedroom mix that included 1-, 2- and 3-bedroom units, the highest ratio was 1.5 spaces per unit. At such a ratio, the project would require seventy-five vehicle spaces, and the applicant is proposing seventy-seven vehicle spaces for the subject project. Neither of the two developments with parking ratios over 1.5 spaces per unit included one bedroom units, which historically have lower parking demand than larger units.

The front yard setback requirement along Coronado Avenue is 15 feet and the applicant is proposing a setback of 3 feet 8 inches. Requiring a 15 foot setback would reduce the number of affordable rental units proposed from fifty to forty-four, thus minimizing the positive impact on the City's shortage of affordable housing.

The proposed development would provide fifty affordable rental housing units for a period of no less than fifty-five years. The mix of 1-, 2- and 3-bedroom units would house individuals, small, and large families earning 30 – 60 percent of AMI. Each of the requested deviations would be necessary to allow for the fifty affordable rental housing units proposed, given the site size and constraints. The proposed development has otherwise been designed and conditioned to ensure conformance to the requirements of the LDC. Therefore, the proposed use will comply with the relevant regulations of the SDMC in effect for this site.

## **B. ENVIRONMENTALLY SENSITIVE LANDS**

**1. 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 proposed project includes mitigation measures to offset potential impacts to the environment in the areas of Biological Resources, Water Quality, Air Quality and Noise as described in FONSI/MND, Project No. 31925. As a condition of the proposed Site Development Permit, a Mitigation, Monitoring and Reporting Program [MMRP] has been prepared for the project to mitigate potentially significant impacts. The applicant has opted to pay for off-site mitigation of project impacts to 2.38 acres of non-native grassland by paying \$59,500 into the City of San Diego's Habitat Acquisition Fund, prior to the issuance of the grading permit.

The applicant is required to establish and maintain a minimum 15-foot wide buffer along the entire length of the parcel between the proposed structures and top of slope of Nestor Creek. The MMRP includes conditions that would prohibit all structures and active or passive uses from the biological buffers.

Pursuant to SDMC section 143.0141, the project applicant has conferred with the U.S. Fish & Wildlife Service and the California Department of Fish and Game (March 2004) to seek input on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat. The recommended measures to reduce impacts have been incorporated as mitigation measures to the project and are defined in the MMRP as documented in the MND/ FONSI.

Site grading has the potential to change drainage patterns and surface run-off however, mitigation measures, including temporary and permanent Best Management Practices [BMPs] to protect on and off site drainages have been incorporated into the project design. The project site is neither within the 100-year or 500-year floodplain of Nestor Creek as shown on the Federal Emergency Management Agency [FEMA] Flood Insurance Rate Map. Therefore, 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.

**2. 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 project design minimizes impacts to natural landforms. The project site includes the Nestor Creek channel, portions of which have already been channelized for the Coronado Avenue undercrossing. The project site was previously augmented with fill material in the mid-1970's to create an elevated pad above the flood level of Nestor Creek. The project scope includes a 15-foot buffer along Nestor Creek to ensure no impacts to the creek or the creek banks.

The project would not result in risk from flood hazards/erosion. Nestor Creek along the project site is a partially natural channel and partially channelized. The northwestern section of the creek has been placed in a concrete channel to contain the 100-year flood. A triple box culvert system conveys Nestor Creek under Coronado Avenue. The site elevation is about 20 feet above mean sea level [MSL] with the elevation of Nestor Creek at about 5 feet MSL. The floodway of Nestor Creek at the cross section along this project site is at 50 feet wide with a base flood water surface elevation between 17.7 feet National Geodetic Vertical Datum of 1929 [NGVD] as reflected in the August 22, 2003 Letter of Map Revision [LOMR].

No development is proposed within either the 100-year or 500-year floodplain of Nestor Creek as shown on the FEMA Flood Insurance Rate Map.

A Drainage Study was prepared by Masson & Associates (March 2004) to determine surface flow for storm water runoff and the drainage features were found to be adequate to accommodate the proposed runoff.

The project would not result in geologic hazards. The project location is within an area of liquefaction risk (low potential) associated with the Nestor Creek area (hazard code 32) in the City of San Diego seismic hazard survey. As such, a geotechnical investigation was prepared by Southern California Soil & Testing (March 2004). The report finds that the site is suitable for the proposed development with implementation of the geotechnical recommendations to address the fill and alluvial material. No faults have been mapped on site. The site is approximately 6 miles south of the active Rose Canyon Fault.

The project would not result in fire hazards. The project has been designed to meet all Fire and Life Safety codes. Fire Department service coverage exists for this area and is provided by Station Number 30 at Coronado Avenue and Hollister Street less than 0.5 miles from the project site.

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

**3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.** Nestor Creek along the project site is a partially natural channel and partially channelized. No development is proposed within the 100-year or 500-year floodplain of Nestor Creek as shown on the FEMA Flood Insurance Rate Map.

According to the SDMC, a 100-foot buffer is normally required as a setback from wetlands or floodplains for projects within the Coastal Zone. However, this project is not located within the Coastal Overlay Zone; therefore, the 100-foot setback is not required and a 15-foot setback has been established. None of the creek bank or creek area would be impacted by the project. The project proposes no fill in the streambed or within the Waters of the United States. The lack of vegetative diversity in the channel and resultant poor wildlife diversity in this urban setting precludes the need for the typical 100-foot setback. Use of grass swales to filter stormwater runoff and diversion of runoff to Coronado Avenue would further prevent impacts to the creek from this project.

According to the City of San Diego Multiple Species Conservation Program [MSCP], the 100-foot minimum buffer area shall not be reduced when it serves the functions and values of slowing and absorbing flood waters for flood and erosion control, sediment filtration, water purification, and ground water recharge. Reduction of the buffer to 15 feet would not result in additional flooding or erosion along the creek, changed water flow rate to the creek, or degradation of water quality in the creek as demonstrated by the project's drainage study which indicates that no excess runoff from the site would be generated as further discussed in the Hydrology section of this Initial Study/Environmental Assessment document.

A biological evaluation was prepared by Pacific Southwest Biological Services (March 2004 as revised April 2004). The current project site is an open field of fill spoils annually disced for weed abatement. No native plants were observed in the upland flat primary portion of the project site. Discing results in mostly bare exposed soil. However, during the field visit in March 2004, the site had not been disced and was supporting a cover of non-native grasses of the genus *Bromus*. Two vegetation types occur on the project site: disturbed field/non-native grassland and freshwater marsh. In accordance with the City of San Diego Biology Guidelines, mitigation is specified for removal of the non-native grassland totaling 2.38 acres.

The site also contains freshwater marsh habitat associated with Nestor Creek. No protected plant species were observed. Several invasive species were observed in the creek such as Brazilian Pepper Trees, Castor Bean, and Tamarisk. The landscape plans call for removal of these invasive species and replanting with native species. Therefore, the proposed development

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

**4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program Subarea Plan.** Because the project is neither within nor adjacent to a Multiple Habitat Planning Area [MHPA], no habitat planning or adjacency issues associated with the MSCP apply. Likewise, no MSCP-covered species were found or are expected to occur on the project site or be impacted by the project according to the biology report prepared for the project.

However, because the project site is adjacent to wetlands/floodplains, MSCP adjacency issues have been factored into project design.

According to the MSCP, the 100-foot minimum buffer area shall not be reduced when it serves the functions and values of slowing and absorbing flood waters for flood and erosion control, sediment filtration, water purification, and ground water recharge. Reduction of the buffer to 15 feet would not result in additional flooding or erosion along the creek, changed water flow rate to the creek, or degradation of water quality in the creek as demonstrated by the project's drainage study which indicates that no excess runoff from the site would be generated.

**5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.** A Water Quality Technical Report/Stormwater Management Plan has been prepared for the project by Masson & Associates (March 2004). Runoff from the project site would be directed into grass treatment swales and via filtered catch basins to an on-site detention basin. The basin would have an outlet control and filtered inlet and then be diverted via underground drains to the storm drain system in Coronado Avenue.

A Drainage Study was prepared by Masson & Associates (March 2004) to determine surface flow for stormwater runoff. BMPs are defined as project mitigation to minimize stormwater runoff into Nestor Creek during construction/grading activity. Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

**6. 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.** Mitigation measures have been defined for the following resources areas: biology, water quality, air quality, and noise. Pursuant to the California Environmental Quality Act [CEQA], the mitigation has been defined commensurate with the level of impact to reduce potential impacts to the identified resources to below a level of significance.

To protect biological resources, mitigation is defined to:

- Maintain a 15-foot buffer with fencing along the creek,
- Remove invasive plant species from the creek and to replant with native species,

- Develop a revegetation plan in consultation with the California Department of Fish and Game and the U.S. Fish and Wildlife Service,
- Shield outdoor lighting from falling on the creek and creek buffer,
- Complete a pre-construction survey for potential raptors nesting in the nearby mature eucalyptus trees.

To protect Water Quality, mitigation is defined to:

- Comply with the State Water Resources Control Board General Construction Permit, and the Municipal Storm Water Permit,
- Install and maintain silt fencing along Nestor Creek during construction activity,
- Develop and adhere to a Water Pollution Control Plan and Storm Water Pollution Prevention Plan,
- Maintain on-site construction equipment in good condition,
- Install a post-construction detention basin to collect and filter runoff.

To protect air quality, mitigation is defined to:

- Provide for site watering to reduce dust.

To protect the future occupants from road noise, mitigation is defined to:

- Ensure that the noise environment in habitable rooms would be 45 dBA CNEL or below.

### C. DEVIATIONS FOR AFFORDABLE/IN-FILL HOUSING PROJECTS

1. **The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City.** The project is subject to, and exceeds the requirements of the Inclusionary Housing Ordinance. The project has been conditioned to comply with the Affordable Housing Density Bonus Regulations (Chapter 14, Article 3, Division 7 of the LDC) by entering into an agreement with the San Diego Housing Commission to ensure the construction and occupancy of the fifty affordable housing units, to be rented at rates affordable to households earning no more than 60 percent of the AMI, for a period of no less than fifty-five years. The applicant has stated that the mix of sixteen 1-bedroom units, eighteen 2-bedroom units, and sixteen 3-bedroom units will be reserved for individuals, small, and large families earning 30 – 60 percent of the area median income. Therefore, the proposed development will materially assist in accomplishing the



goal of providing affordable housing opportunities in economically balanced communities throughout the City.

**2. The development will not be inconsistent with the purpose of the underlying zone.** The purpose of the residential zones is to provide for areas of residential development at various specified densities throughout the City. The residential zones are intended to accommodate a variety of housing types and to encourage the provision of housing for all citizens of San Diego. The proposed development would provide fifty affordable rental housing units for a period of no less than fifty-five years. The mix of 1-, 2- and 3-bedroom units would house individuals, small, and large families earning 30 – 60 percent of AMI, thus accommodating a variety of housing types and encouraging the provision of housing for all citizens of San Diego.

As an incentive for providing affordable housing, the San Diego Municipal Code (Section 143.0920 governing Deviation Requirements for Affordable/In-Fill Housing) allows a developer of an affordable housing project to request deviations from the applicable development regulations of the underlying zone pursuant to a Site Development Permit decided in accordance with a Process 4, provided that the required findings can be made.

The project proposes deviations to the development standards of the LDC for parking, setbacks, and structure height. The RM-1-1 zone allows for the development of forty residential units on the 2.78 acre site. The applicant is entitled to a 25 percent density bonus for residential development by entering into an agreement with the San Diego Housing Commission to ensure the construction and occupancy of 100 percent of the fifty rental housing units affordable at or below 60 percent AMI. The applicant has agreed to meet that requirement and the permit has been so conditioned.

The parking requirement for this project consisting of sixteen 1-bedroom units, eighteen 2-bedroom units, and sixteen 3-bedroom units located within the Transit Parking Overlay zone is eighty-four vehicle parking spaces of which four spaces are accessible parking spaces, in addition to five motorcycle spaces, and twenty-four bicycle spaces. The project proposes to deviate from the parking requirements by proposing seventy-seven vehicle spaces (including four accessible spaces) where eighty-four are required by the LDC. The applicant provided staff with parking surveys for six existing and comparable affordable housing developments, with peak vehicle parking ratios ranging from 0.93 spaces per unit to 1.93 spaces per unit. Of the three surveys for developments with a bedroom mix that included 1-, 2- and 3-bedroom apartments, the highest ratio was 1.5 spaces per unit. At such a ratio, the project would require seventy-five vehicle spaces, and the applicant is proposing seventy-seven vehicle spaces for the subject project. Neither of the two developments with parking ratios over 1.5 spaces per unit included one bedroom units, which historically have lower parking demand than larger units.

The front yard setback requirement along Coronado Avenue is 15 feet and the applicant is proposing a setback of 3 feet 8 inches. The 2.78 acre site is constrained by the Nestor Creek channel along the south and west property lines, which requires a 15-foot buffer from the top of slope, as well as the provision of a 5-foot wide public access easement and pedestrian/bicycle trail along Nestor Creek. In addition, the applicant has been required to dedicate an additional 9 feet of right-of-way along project frontage on Coronado Avenue as a part of the project's

design for the future widening of Coronado Avenue, as per the Transportation Element of the Community Plan. Requiring a 15 foot setback would reduce the number of affordable rental units proposed from fifty to forty-four, thus minimizing the positive impact on the City's shortage of affordable housing.

Each of the requested deviations would be necessary to allow for the fifty affordable rental housing units proposed, given the site size and constraints. The proposed development has otherwise been designed and conditioned to ensure conformance to the requirements of the SDMC. Therefore, the development will not be inconsistent with the purpose of the underlying zone.

**3. Any proposed deviations 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 project proposes to deviate from the SDMC requirements covering parking, front yard setbacks, and structure height. In addition, the project's density exceeds that allowed by the RM-1-1 zone; however, the proposal is eligible to apply for that deviation in accordance with the SDMC Density Bonus Regulations for Affordable Housing Projects.

The parking requirement for this project consisting of sixteen 1-bedroom units, eighteen 2-bedroom units, and sixteen 3-bedroom units located within the Transit Overlay Zone is eighty-four vehicle parking spaces of which four spaces are accessible parking spaces, in addition to five motorcycle spaces, and twenty-four bicycle spaces. The project proposes to deviate from the parking requirements by proposing seventy-seven vehicle spaces (including four accessible spaces). The applicant provided staff with parking surveys for six existing and comparable affordable housing developments, with peak vehicle parking ratios ranging from 0.93 spaces per unit to 1.93 spaces per unit. Of the three surveys for developments with a bedroom mix that included 1-, 2- and 3-bedroom apartments, the highest ratio was 1.5 spaces per unit. At such a ratio, the project would require seventy-five vehicle spaces, and the applicant is proposing seventy-seven vehicle spaces for the subject project. Neither of the two developments with parking ratios over 1.5 spaces per unit included one bedroom units, which historically have lower parking demand than larger units. The proposed number of parking spaces allows for additional affordable rental units than could be provided if parking requirements of the SDMC were met, which assists in providing affordable housing options to City of San Diego residents.

The front yard setback requirement along Coronado Avenue is 15 feet and the applicant is proposing a setback of 3 feet 8 inches. In addition, the regulations of the RM-1-1 zone limit the building height to 19 feet at the 15 feet setback, where the applicant is proposing 21 feet 2 inches. The 2.78 acre site is constrained by the Nestor Creek channel along the south and west property lines, which requires a 15-foot buffer from the top of slope, as well as the provision of a 5-foot wide public access easement and pedestrian/bicycle trail along Nestor Creek. In addition, the applicant has been required to dedicate an additional 9 feet of right-of-way along project frontage on Coronado Avenue as a part of the project's design for the future widening of Coronado Avenue, as per the Transportation Element of the Community Plan. The proposed development would provide fifty affordable rental housing units for a period of no less than fifty-five years. The mix of 1-, 2- and 3-bedroom units would house individuals, small, and large families earning 30 – 60 percent of AMI.

At staff's request, the applicant studied an alternative which met the front yard setback requirements. Requiring a 15 foot setback would reduce the number of affordable rental units proposed from fifty to forty-four, thus minimizing the positive impact on the City's shortage of affordable housing. Allowing a reduced setback allows for additional affordable rental units, which assists in providing affordable housing options to City of San Diego residents.

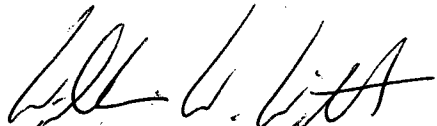
The RM-1-1 zone allows for the development of forty residential units on the 2.78 acre site. The applicant is entitled to a 25 percent density bonus for residential development by entering into an agreement with the San Diego Housing Commission to ensure the construction and occupancy of 100 percent of the fifty rental housing units affordable at or below 60 percent AMI. The applicant has agreed to meet that requirement and the permit has been so conditioned. Use of the Affordable Housing Density Bonus regulations has allowed the applicant to provide ten additional affordable rental housing units than would have otherwise been allowed.

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

BE IT FURTHER RESOLVED, that the appeal of Amenda B. Caniya is denied; the decision of the Planning Commission is sustained; and Site Development Permit No. 84104 is granted to Affirmed Family Housing Partners, Creekside, LLC, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: CASEY GWINN, City Attorney

By   
William W. Witt  
Deputy City Attorney

WWW:pev  
10/27/04  
Or.Dept:Clerk  
R-2005-464  
MMS #837

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SITE DEVELOPMENT PERMIT NO. 84104  
**CREEKSIDE TRAILS – PROJECT NUMBER 31925 [MMRP]**  
City Council

This site development permit [SDP] is granted by the Council of the City of San Diego to Affirmed Family Housing Partners-Creekside, LLC, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0504. The 2.78-acre site is located on the south side of Coronado Avenue, (Assessor's Parcel Number 634-010-30) between Green Bay Street and Nestor Way in the RM-1-1 zone and the Coastal Height Limit and Transit Overlay zones within the Otay Mesa-Nestor Community Planning area. The project site is legally described as Lot 9 of Nestor, in the City of San Diego, County of San Diego, State of California, according to Licensed Survey Map No. 90, filed in the Office of the County Recorder of San Diego County. Excepting therefrom that portion lying easterly of the westerly line of Lot 5 of said Nestor, according to Licensed Survey Map No. 90, filed in the Office of the County Recorder of San Diego County, and the southerly prolongation of said westerly line to the southerly line of said Lot 9. Also excepting therefrom that portion lying within South Bay Estates Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1005, recorded in the Office of the San Diego Recorder of San Diego County, February 20, 1981.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to construct seven buildings containing fifty affordable housing multi-family rental units and common use, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated September 21, 2004, on file in the Development Services Department. The exhibits, referred to as Exhibit "A," are identified as follows:

- A0.1: Site Plan
- A0.2: Fire Land and Turning Radii Diagram
- A1.0: Building 1 Floor Plans
- A1.1: Building 1 Exterior Elevations
- A1.2: Building 1, 2, 3, & 4 Building Sections

- A2.0: Building 2 Floor Plans
- A2.1: Building 2 Exterior Elevations
- A3.0: Building 3 Floor Plans
- A3.1: Building 3 Exterior Elevations
- A4.0: Building 4 Floor Plans
- A4.1: Building 4 Roof Plan
- A4.2: Building 4 Exterior Elevations
- A5.0: Building 5 Floor Plans
- A5.1: Building 5 Exterior Elevations
- A5.2: Building 5 Building Sections
- A6.0 Building 6 Commons Floor Plans & Elevations
- C1: Civil Grading and Drainage Plan
- L1: Landscape Development Plan

The project or facility shall include:

- a. Fifty affordable housing multi-family rental units, totaling 43,980 square feet in seven buildings, utilizing the Density Bonus provisions of the SDMC with deviations to the required parking, front yard setback, and structure height (to exceed the height of the building envelope at the front setback);
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Seventy-seven off-street vehicle parking spaces (seventy-three standard & four accessible), five motorcycle spaces and twenty-four bicycle spaces;
- d. A community building hosting a computer lab, homework center, laundry room and on-site property management;
- e. A tot lot and passive recreation facilities; and
- f. 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.

**STANDARD REQUIREMENTS:**

- 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. 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.

8. 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.

9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit A. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit 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 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.

**ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

11. As conditions of Site Development Permit No. 84104, the mitigation measures specified in the Mitigation Monitoring and Reporting Program [MMRP], and outlined in the Mitigated Negative Declaration, No. 31925 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

12. The Owner/Permittee shall comply with the MMRP as specified in the Mitigated Negative Declaration, No. 31925 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:

- Biology
- Water Quality
- Air Quality, and
- Noise

**AFFORDABLE HOUSING REQUIREMENTS:**

13. The project is subject to the requirements of the Affordable Housing Density Bonus Regulations. Prior to the issuance of any building permit, the applicant shall comply with the requirements of the City's Affordable Housing Density Bonus Regulations (Chapter 14, Article 3, Division 7 of the Land Development Code [LDC]) by entering into an agreement with the San Diego Housing Commission to ensure the

construction and occupancy of the fifty affordable housing units, to be rented at rates affordable to households earning no more than 60 percent of the Area Median Income.

**ENGINEERING REQUIREMENTS:**

14. The applicant shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

15. Prior to building occupancy, the developer shall provide a 5-foot wide public access easement for the pedestrian/bicycle linkage along the designated greenway along Nestor Creek as shown on Exhibit "A," and construct and maintain within the easement a 5-foot wide trail to the satisfaction of the City Engineer. To facilitate the possible future connection of this trail to offsite trails, the trail shall include a culvert where the trail crosses the drainage ditch at the eastern boundary of the site. The developer shall construct and maintain a fence at the eastern end of the trail to prevent pedestrians from gaining access to the adjacent private property, until the City determines that the fence is no longer required and notifies the developer of this decision.

16. Prior to the issuance of any construction permit, the Applicant shall incorporate any construction Best Management Practices [BMPs] necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

17. Prior to the issuance of any construction permit the Subdivider shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report.

18. Prior to the issuance of any construction permit, the Subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance.

19. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01(NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent [NOI] shall be filed with the SWRCB.

20. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99 08 DWQ.



21. The drainage system proposed for this development is private and subject to approval by the City Engineer.
22. All driveways and curb openings shall comply with City Standard Drawings G-14A, G-16 and SDG-100 to the satisfaction of the City Engineer.
23. Prior to the issuance of any construction permit, the applicant shall provide an irrevocable offer of dedication [IOD] of 9 feet along the property frontage on Coronado Avenue. It is the responsibility of the subdivider to provide the (IOD) free and clear of all encumbrances and prior easements. The subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.

**FIRE REQUIREMENTS:**

24. In lieu of providing Fire Department access each building on site shall be equipped with a residential fire sprinkler system, satisfactory to the Fire Marshal.

**TRANSPORTATION REQUIREMENTS:**

25. No fewer than seventy-seven off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A," on file in the Office of the Development Services Department. Parking spaces shall comply at all times with requirements of the Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.
26. One year from date of project's opening, the applicant shall monitor the project's parking demand to the satisfaction of the City Engineer. At minimum, the monitoring plan shall include a listing of the number of vehicles registered per dwelling unit and an on-site parking occupancy survey, conducted for a period of at least three days. If demand is found to meet or exceed supply, the applicant shall provide subsidized transit passes or other incentives to reduce the demand to a level at or below the parking supply.
27. Prior to the issuance of any building permit, applicant shall provide visibility triangle at the proposed driveways on Coronado Avenue per City of San Diego Land Development Code section 113.0273, satisfactory to the City Engineer. No obstacles higher than 36" will be permitted within the visibility triangles.
28. Prior to the issuance of the first building permit, the applicant shall assure by permit and bond the restriping of Coronado Avenue to provide a 2-way center left turn lane, satisfactory to the City Engineer.

**FACILITIES FINANCING REQUIREMENTS:**

29. Prior to issuance of any building permits, a Development Impact Fee [DIF] of \$108,550 is required for this project. This fee is based upon the determination that the project will result in an increase of fifty dwelling units over what currently exists on the site.

**LANDSCAPE REQUIREMENTS:**

30. Prior to issuance of any construction permits or grading permits, complete landscape construction documents, including planting and irrigation plans, notes, details, and specifications, shall be submitted to the City Manager for approval. The plans shall be in substantial conformance to Exhibit "A," on file in the Office of the Development Services Department and shall also include self-clinging or cascading vines on the retaining wall along the east side of the project to provide softening/screening from adjacent property and the public right-of-way.

31. In the event that the Landscape Plan and the Site Plan conflict, the Landscape Plan shall prevail.

32. No change, modification, or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

33. If any existing hardscape or landscape indicated on the approved plans is damaged or removed during demolition, or construction, it shall be the responsibility of the Owner/Permittee to assure that it shall be repaired and/or replaced in kind and equivalent size per the approved plans within fifteen days.

34. Prior to the issuance of any engineering permit for right-of-way improvements, complete landscape construction for right-of-way improvements shall be submitted to the City Manager for approval. Improvement plans shall provide for a non-contiguous sidewalk with a minimum parkway width of 4 feet for the planting of street trees between the curb and sidewalk. The non-contiguous sidewalk shall be designed to safely transition into the existing contiguous sidewalk at the western and eastern limits of the projects frontage.

35. 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. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

36. The Permittee or subsequent Owner(s) shall be responsible for the installation and maintenance of all landscape improvements consistent with the Landscape Regulations and Landscape Standards. Invasive species are prohibited from being planted, and existing prohibited plant species shall be eradicated. Other invasive, non native plant species adjacent to and in Nestor Creek shall also be removed.

**PLANNING/DESIGN REQUIREMENTS:**

37. 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 a 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.

38. 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.

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

40. 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.

41. No building additions, including patio covers, shall be permitted unless approved by the homeowners association and the City Manager. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.

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

- a. Approved project sign plan (Exhibit A); or
- b. Citywide sign regulations.

43. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the Development Services Department, Land Development Review Division, for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and a point by point plot to include all areas within the private property and to extend a minimum of 50 feet beyond the property line, construction details as necessary to direct installation of the outdoor lighting system, manufacturers name, visors, prisms, lenses and reflectors and a lighting plan locating each fixture in plan view and a legend. The outdoor lighting system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.

44. Prior to the issuance of any occupancy permit, a night inspection shall be required to verify compliance of the outdoor lighting system. No light shall be directed to fall outside the property line. Light levels along the perimeter of the property shall be measured no higher than three footcandles. Light levels throughout the development shall be the least practical level necessary to effectively illuminate the operation. Sky glow or light halo shall be reduced to the greatest extent practical and in no case shall initial light levels be measured exceeding eight footcandles anywhere within the site. The Owner/Permittee, or an authorized representative, shall provide an illuminance meter to measure light levels as required to establish conformance with the conditions of this Permit during the night inspection. Night inspections may be required additional fees as determined by the City Manager.

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

46. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
47. 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.
48. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, 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.
49. No merchandise, material, or equipment shall be stored on the roof of any building.
50. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (SDMC) 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."

**WASTEWATER REQUIREMENTS:**

51. 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.
52. 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.
53. Prior to the installation of private sewer facilities in or over any public right of way, the applicant shall obtain an Encroachment Maintenance and Removal Agreement.
54. 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:**

55. Prior to the issuance of any building permits, the Owner/Permittee shall provide evidence to the Development Project Manager indicating that application for water service has been made to the California American Water Company (CAWC).
56. Due to the City of San Diego's present right to acquire CAWC's assets by eminent domain at a future date certain, prior to the issuance of any building permits, the Owner/Permittee shall deposit with the City an amount the City deems equal to the value of meters, hydrants, pipes, and other public water utilities that benefit the Owner/Permittee's property and which are paid for or installed by CAWC.

57. The City shall set such deposit aside in a separate account to be used only for the future City acquisition of the CAWC assets. If the Owner/Permittee enters into any reimbursement agreement with any utility relative to facilities installed by the Owner/Permittee, then the Owner/Permittee shall assign any such agreement to the City of San Diego.

**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 on September 21, 2004 by Resolution No. R-299668.

AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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

**AFFIRMED FAMILY HOUSING  
PARTNERS-CREEKSIDE, LLC,**  
a California Limited Liability Company  
Owner/Permittee

By \_\_\_\_\_

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

R- 299668