

RESOLUTION NUMBER R-300202

ADOPTED ON MARCH 8, 2005

WHEREAS, Marker Foothill, LLC, and Benito and Sylvia Hernandez Owners/ Permittees, filed an application with the City of San Diego for a planned development and a site development permit to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development consisting of twenty-seven detached, 2-story, residential triplex structures on a consolidated 6.47-acre site; and create a 0.12-acre remnant lot (5,228 square feet) containing an existing single-family residence located at 345 Foothill Road. The remaining 0.21-acres of the project site shall be dedicated to the City of San Diego for a cul-de-sac at the westerly terminus of Foothill Road and for a private residential driveway for the existing single-family residential structure located at Foothill Road. The project, known as the Beyer Property project, is located at 3774 Beyer Boulevard, between Del Sur Boulevard and Smythe Avenue, and legally described as the South two-fifths of the West Half of the East Half of the Southeast Quarter of the Northeast Quarter of Section 35, Township 18 South, Range 2 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California, according to Official Plat Thereof; Parcel A of Parcel Map No. 19146, Portion of Lot A-176, Lot A-177 through A-179 of Addition No. 2 of San Ysidro, Map No. 1246, in the San Ysidro Planned District within the San Ysidro Redevelopment Project Area and San Ysidro Community Plan area, in the RS-1-1 and RM-1-1 zones; and

WHEREAS, on January 13, 2005, the Planning Commission of the City of San Diego considered Planned Development Permit [PDP] No. 119404 and Site Development Permit [SDP]

Permit No. 139964, and pursuant to Resolution No. 3635-PC-1 voted to recommend City Council approval of the Permit; and

WHEREAS, the matter was set for public hearing on March 8, 2005, 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 Planned Development Permit No. 119404 and Site Development Permit No. 139964:

**A. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE**  
**[SDMCI SECTION 126.0604]**

**1. The proposed development will not adversely affect the applicable land use plan.** The disturbed, partially developed 6.80-acre irregular-shaped project site consists of seven parcels located along the north side of Beyer Boulevard, between Del Sur Boulevard and Smythe Avenue, in the Planned Urbanized Development Area of the Land Use Plan, San Ysidro Community Plan, San Ysidro Redevelopment Project Area, and the San Ysidro Planned District. The community plan currently designates the site for Low Density Residential (5-10 DU/AC) for one of the seven parcels and the other six parcels are designated Low-Medium Density Residential (10-15 DU/AC) and could accommodate a total of ninety-five residential units.

One of the seven parcels which currently contains an existing single-family residence, located at 345 Foothill Road, is zoned RS-1-7 (Residential – Single Unit; minimum 5,000 square-foot lot) and the other six parcels are zoned RM-1-1 (Residential – Multiple Unit; 1 dwelling per 3,000 square-feet of lot area) within the San Ysidro Planned District.

The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81 unit multi-family condominium development consisting of twenty-seven detached, 2-story, residential triplex structures on a consolidated 6.47-acre site; and create a 0.12-acre remnant lot (5,228 square feet) containing an existing single-family residence, located at 345 Foothill Road. The remaining 0.21-acres of the gross 6.80-acre project site shall be dedicated to the City of San Diego for a cul-de-sac at the westerly terminus of Foothill Road and for a private residential driveway for the existing single-family residential structure located at 399 Foothill Road. Therefore, the proposed development will not adversely affect the applicable land use plan.

**2. The proposed development will not be detrimental to the public health, safety, and welfare.** The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family

condominium development that is consistent with the applicable land use plan designated for the site. The permit prepared for this development includes various conditions (and referenced exhibits) of approval relevant to achieving project compliance with the regulations and applicable ordinance provisions of the SDMC in affect for this site; and that such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety, and general public welfare. These conditions (and referenced exhibits) include limitations upon the extent and amount of density, lot coverage, minimum parking, landscaping, site access, and required public improvements.

**3. The proposed development will comply with the regulations of the Land Development Code.** The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development. One of the seven parcels currently contains an existing single-family residence, located at 345 Foothill Road, is zoned RS-1-7 (Residential – Single Unit; minimum 5,000 square-foot lot) and the other six parcels are zoned RM-1-1 (Residential – Multiple Unit; 1 dwelling per 3,000 square-feet of lot area) within the San Ysidro Planned District.

To achieve the density goals of the community plan, and based on the irregular shaped lot and site constraints, the applicant is requesting deviations from the RM-1-1 zone rear- and side-yard setbacks, additional parking regulations, public improvement design, and terrace drain on slopes. As a component of the application, the proposed project will conform to the Inclusionary Affordable Housing Requirements and Council Policy 600-27(A) criteria for the Affordable/In-Fill Housing Expedite Program by setting aside at least 10 percent, of the total for-sale dwelling units on-site for households with an income at or below 100 percent Area Median Income [AMI], currently \$63,400 for a family of four. The proposal would help the City address its shortage of affordable housing during a time when the City Council has determined that the City of San Diego is in a Housing State of Emergency. Therefore, the decision-maker is able to support the deviations requested.

**4. The proposed development, when considered as a whole, will be beneficial to the community.** The proposed project site is located in the Sunset Neighborhood within the San Ysidro Community Planning area and the San Ysidro Redevelopment Project Area. In order to preserve and enhance the small-scale, single-family character of the surrounding neighborhood, the proposed development consists of twenty-seven detached, 2-story, residential triplex structures, and provides for many pedestrian design elements throughout the project site. The proposed development shall eliminate physical blight and provide for a more livable neighborhood that would result in a net gain of seventy-nine units to the San Ysidro Community, which meets the goals of the San Ysidro Community Plan and the San Ysidro Redevelopment Project. As a component of the application, the proposed project will set aside at least 10 percent of the total for-sale dwelling units on-site for households with an income at or below 100 percent AMI.

**5. Any proposed deviations pursuant to SDMC Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.** To achieve the density goals of the community plan, and based on the irregular shaped lot and site constraints, the applicant is requesting deviations from the RM-1-1 zone rear-

and side-yard setbacks, additional parking regulations, public improvement design, and terrace drain on slopes. In order to preserve and enhance the small-scale, single-family character of the surrounding neighborhood, the proposed development consists of twenty-seven detached, 2-story, residential triplex structures, and provides for many pedestrian design elements throughout the project site. The proposed development shall eliminate physical blight and provide for a more livable neighborhood that would result in a net gain of seventy-nine units to the San Ysidro Community, which meets the goals of the San Ysidro Community Plan and the San Ysidro Redevelopment Project. As a component of the application, the proposed project will set aside at least 10 percent of the total for-sale dwelling units on-site for households with an income at or below 100 percent AMI. Therefore, the decision-maker has determined that the proposed deviations are appropriate for this location and will result in a more desirable project.

**B. SITE DEVELOPMENT PERMIT – SDMC SECTION 126.0504**

**1. The proposed development will not adversely affect the applicable land use plan.** The disturbed, partially developed 6.80-acre irregular-shaped project site consists of seven parcels located along the north side of Beyer Boulevard, between Del Sur Boulevard and Smythe Avenue, in the Planned Urbanized Development Area of the Land Use Plan, San Ysidro Community Plan, San Ysidro Redevelopment Project Area, and the San Ysidro Planned District. The community plan currently designates the site for Low Density Residential (5-10 DU/AC) for one of the seven parcels and the other six parcels are designated Low-Medium Density Residential (10-15 DU/AC) and could accommodate a total of 95 residential units.

One of the seven parcels which currently contains an existing single-family residence, located at 345 Foothill Road, is zoned RS-1-7 (Residential – Single Unit; minimum 5,000 square-foot lot) and the other six parcels are zoned RM-1-1 (Residential – Multiple Unit; 1 dwelling per 3,000 square-feet of lot area) within the San Ysidro Planned District.

The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development consisting of twenty-seven detached, 2-story, residential triplex structures on a consolidated 6.47-acre site; and create a 0.12-acre remnant lot (5,228 square feet) containing an existing single-family residence, located at 345 Foothill Road. The remaining 0.21-acres of the gross 6.80-acre project site shall be dedicated to the City of San Diego for a cul-de-sac at the westerly terminus of Foothill Road and for a private residential driveway for the existing single-family residential structure located at 399 Foothill Road. Therefore, the proposed development will not adversely affect the applicable land use plan.

**2. The proposed development will not be detrimental to the public health, safety, and welfare.** The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development that is consistent with the applicable land use plan designated for the site. The permit prepared for this development includes various conditions (and referenced exhibits) of approval relevant to achieving project compliance with the regulations and applicable ordinance provisions of the SDMC in affect for this site; and that such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety, and general public welfare. These conditions (and referenced exhibits) include

limitations upon the extent and amount of density, lot coverage, minimum parking, landscaping, site access, and required public improvements.

**3. The proposed development will comply with the applicable regulations of the Land Development Code.** The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development. One of the seven parcels which currently contains an existing single-family residence, located at 345 Foothill Road, is zoned RS-1-7 (Residential – Single Unit; minimum 5,000 square-foot lot) and the other six parcels are zoned RM-1-1 (Residential – Multiple Unit; 1 dwelling per 3,000 square-feet of lot area) within the San Ysidro Planned District.

To achieve the density goals of the community plan, and based on the irregular shaped lot and site constraints, the applicant is requesting deviations from the RM-1-1 zone rear- and side-yard setbacks, additional parking regulations, public improvement design, and terrace drain on slopes. As a component of the application, the proposed project will conform to the Inclusionary Affordable Housing Requirements and Council Policy 600-27(A) criteria for the Affordable/In-Fill Housing Expedite Program by setting aside at least 10 percent, of the total for-sale dwelling units on-site for households with an income at or below 100 percent AMI, currently \$63,400 for a family of four. The proposal would help the City address its shortage of affordable housing during a time when the City Council has determined that the City of San Diego is in a Housing State of Emergency. Therefore, the decision-maker is able to support the deviations requests.

### **C. ENVIRONMENTALLY SENSITIVE LANDS DEVIATIONS**

**1. There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands.** The project site has been identified as environmentally sensitive land that contains sensitive biological resources. The ground surface is irregular due to dumped fill/soils. A relatively level graded pad exists in the northeastern quarter of the site which supports disturbed non-native grassland, disturbed herbaceous wetland, and herbaceous wetland vegetation types. The northwestern quarter of the site has been disked (the soil has been worked with a tracker pulled disk harrow) and contains disturbed non-native grassland and disturbed maritime succulent scrub vegetation types. Sheet metal and construction materials are present on the slopes in the northwestern portion of the site.

The partially developed southern half of project site, south of Foothill Road, supports non-native grassland vegetation. The proposed project site is not within or adjacent to the Multi-Habitat Planning Area [MHPA] of the City of San Diego's Multiple Species Conservation Program [MSCP] Subarea Plan area. However, the project implementation would result in the direct loss of all habitats onsite including: 0.59 acre of disturbed maritime succulent scrub (Tier I); 4.10 acres of disturbed non-native grassland (Tier IIIB); 0.06 acre of herbaceous wetland; 0.52 acre of disturbed herbaceous wetland (non-City wetland), and 1.54 acres of developed land (Tier IV).

The analysis has determined that there are no feasible measures that can further minimize the potential adverse effects on the environmentally sensitive land. Therefore, in accordance with SDMC section 143.0141(i)(3) appropriate mitigation has been required for the nature and extent of the project impacts. The mitigation requirement, contained in Section V of the Mitigated Negative Declaration No. 41718, requires the contribution of \$72,600 to the City's Habitat

Acquisition Fund for acquisition of in-tier habitat within the MHPA for direct impacts to 0.59-acre of Tier I disturbed maritime succulent scrub habitat and 4.10-acres of Tier IIIB non-native grassland habitat.

**2. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making.** The analysis of the disturbed, partially developed 6.80-acre irregular-shaped project site has determined that there are no feasible measures that can further minimize the potential adverse effects on the environmentally sensitive land. Therefore, in accordance with SDMC section 143.0141(i)(3) appropriate mitigation has been required for the nature and extent of the project impacts. The mitigation requirement, contained in Section V of the Mitigated Negative Declaration No. 41718, requires the contribution of \$72,600 to the City's Habitat Acquisition Fund for acquisition of in-tier habitat within the MHPA for direct impacts to 0.59-acre of Tier I disturbed maritime succulent scrub habitat and 4.10-acres of Tier IIIB non-native grassland habitat.

**D. SAN YSIDRO PLANNED DISTRICT ORDINANCE SDMC SECTION 103.2203 (d)(3)(A-D)**

**1. The proposed use and project design meet the purpose and intent of this Division, comply with the recommendations of the San Ysidro Community Plan, the General Plan or other applicable plans adopted by the City Council.** The disturbed, partially developed 6.80-acre irregular-shaped project site consists of seven parcels located along the north side of Beyer Boulevard, between Del Sur Boulevard and Smythe Avenue, in the Planned Urbanized Development Area of the Land Use Plan, San Ysidro Community Plan, San Ysidro Redevelopment Project Area, and the San Ysidro Planned District. The community plan currently designates the site for Low Density Residential (5-10 DU/AC) for one of the seven parcels and the other six parcels are designated Low-Medium Density Residential (10-15 DU/AC) and could accommodate a total of ninety-five residential units.

One of the seven parcels which currently contains an existing single-family residence, located at 345 Foothill Road, is zoned RS-1-7 (Residential – Single Unit; minimum 5,000 square-foot lot) and the other six parcels are zoned RM-1-1 (Residential – Multiple Unit; 1 dwelling per 3,000 square-feet of lot area) within the San Ysidro Planned District.

The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development consisting of twenty-seven detached, 2-story, residential triplex structures on a consolidated 6.47-acre site; and create a 0.12-acre remnant lot (5,228 square feet) containing an existing single-family residence, located at 345 Foothill Road. The remaining 0.21-acres of the gross 6.80-acre project site shall be dedicated to the City of San Diego for a cul-de-sac at the westerly terminus of Foothill Road and for a private residential driveway for the existing single-family residential structure located at 399 Foothill Road. Therefore, the proposed development will not adversely affect the applicable land use plan.

**2. The proposed development shall be compatible with existing and planned land use on adjoining properties and shall not constitute a disruptive element to the neighborhood and community. In addition, architectural harmony with the surrounding neighborhood and community shall be achieved as far as practicable.** The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels

into one lot to construct an 81-unit multi-family condominium development that is consistent with the applicable land use plan designated for the site. The surrounding development consists of single-family residential properties, a church, daycare center, Smythe Elementary School, and the terminus of Foothill Road border the eastern site boundary; a public park and a low-rise commercial structure border the northern site boundary; a United States Boarder Patrol facility is to the west; and multi-family residential properties border the southwestern site boundary.

In order to preserve and enhance the small-scale, single-family character of the surrounding neighborhood, the proposed development consists of twenty-seven detached, 2-story, residential triplex structures, and provides for many pedestrian design elements throughout the project site. The proposed development shall eliminate physical blight and provide for a more livable neighborhood that would result in a net gain of seventy-nine units to the San Ysidro Community, which meets the goals of the San Ysidro Community Plan and the San Ysidro Redevelopment Project.

**3. 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.** The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development that is consistent with the applicable land use plan designated for the site. The permit prepared for this development includes various conditions (and referenced exhibits) of approval relevant to achieving project compliance with the regulations and applicable ordinance provisions of the SDMC in affect for this site; and that such conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety, and general public welfare. These conditions (and referenced exhibits) include limitations upon the extent and amount of density, lot coverage, minimum parking, landscaping, site access, and required public improvements.

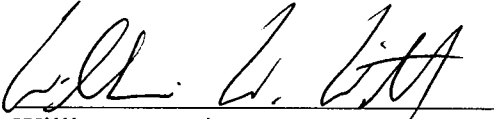
**4. The proposed use will comply with the relevant regulations in the Municipal Code.** The project proposes to demolish two single-family residences and one detached garage, and consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development. One of the seven parcels which currently contains an existing single-family residence, located at 345 Foothill Road, is zoned RS-1-7 (Residential – Single Unit; minimum 5,000 square-foot lot) and the other six parcels are zoned RM-1-1 (Residential – Multiple Unit; 1 dwelling per 3,000 square-feet of lot area) within the San Ysidro Planned District.

To achieve the density goals of the community plan, and based on the irregular shaped lot and site constraints, the applicant is requesting deviations from the RM-1-1 zone rear- and side-yard setbacks, additional parking regulations, public improvement design, and terrace drain on slopes. As a component of the application, the proposed project will conform to the Inclusionary Affordable Housing Requirements and Council Policy 600-27(A) criteria for the Affordable/In-Fill Housing Expedite Program by setting aside at least 10 percent, of the total for-sale dwelling units on-site for households with an income at or below 100 percent AMI, currently \$63,400 for a family of four. The proposal would help the City address its shortage of affordable housing during a time when the City Council has determined that the City of San Diego is in a Housing State of Emergency. Therefore, the decision-maker is able to support the deviations requested.

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

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Planned Development Permit No. 119404 and Site Development Permit No. 13994 is granted to Marker Foothill, LLC and Benito and Sylvia Hernandez, Owners/Permittees, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
William W. Witt  
Deputy City Attorney

WWW:pev  
03/14/05  
Or.Dept:Clerk  
R-2005-961  
MMS #1408



**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

**PLANNED DEVELOPMENT PERMIT NO. 119404**  
**SITE DEVELOPMENT PERMIT NO. 139964**  
**BEYER PROPERTY – PROJECT NO. 41718 [MMRP]**

**CITY COUNCIL**

This planned development permit and site development permit is granted by the Council of the City of San Diego to Marker Foothill, LLC, and Benito and Sylvia Hernandez, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0604, 126.0504 and 103.2203. The 6.80-acre site is located at 3774 Beyer Boulevard, between Del Sur Boulevard and Smythe Avenue in the RS-1-1 and RM-1-1 zone(s) of the San Ysidro Planned District within the San Ysidro Redevelopment Project Area and San Ysidro Community Plan. The project site is legally described as the South two-fifths of the West Half of the East Half of the Southeast Quarter of the Northeast Quarter of Section 35, Township 18 South, Range 2 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California, according to Official Plat Thereof, Parcel A of Parcel Map No. 19146, Portion of Lot A-176, Lot A-177 through A-179 of Addition No. 2 of San Ysidro, Map No. 1246.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners/Permittees to consolidate seven parcels into one lot to construct an 81-unit multi-family condominium development consisting of twenty-seven detached, 2-story, residential triplex structures, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"], dated March 8, 2005, on file in the Development Services Department.

The project or facility shall include:

- a. The demolition of two single-family residences and one detached garage, and the consolidation of seven parcels into one lot to construct an 81-unit multi-family condominium development (10 percent of the units on-site affordable at or below 100 percent Area Median Income [AMI]). The project contains twenty-seven detached, 2-story, residential triplex structures on a consolidated 6.47-acre site, and creates a 0.12-acre remnant

lot (5,228 square feet) containing an existing single-family residence, located at 345 Foothill Road. The remaining 0.21-acres of the project site shall be dedicated to the City of San Diego for a cul-de-sac at the westerly terminus of Foothill Road and for a private residential driveway for the existing single-family residential structure located at 399 Foothill Road;

- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking facilities;
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

**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 Permittees sign and return 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 Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(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. 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.

12. As conditions of Planned Development Permit No. 119404 and Site Development Permit No. 13994, the mitigation measures specified in the MMRP, and outlined in the Mitigated Negative Declaration, No. 41718 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

13. The Owners/Permittees shall comply with the MMRP as specified in Mitigated Negative Declaration No. 41718 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:

- Biological Resources
- Noise
- Paleontological Resources

**AFFORDABLE HOUSING REQUIREMENTS:**

14. Prior to receiving the first residential building permit, the applicant shall comply with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code. The applicant has elected to meet these requirements by selling at least 10 percent of the units at prices affordable to households earning no more than 100 percent AMI. Prior to receiving the first residential building permit, the applicant must enter into an agreement with the San Diego Housing Commission.

**TRANSPORTATION REQUIREMENTS:**

15. No fewer than 177 vehicular parking spaces and eight motorcycle parking spaces shall be maintained on this site at all times.

16. No landscaping and/or hardscaping more than 36 inches in height shall be maintained in the visibility triangle as shown on Exhibit "A."

17. Prior to the issuance of any construction permit, the Owners/Permittees shall provide 10 feet Irrevocable Offer of Dedication [IOD] along project frontage on Beyer Boulevard and shall assure by permit and bond widening of Beyer Boulevard providing

additional 10 feet of pavement, curb, gutter and sidewalk within 10-foot curb to propertyline with appropriate off-site transition to the existing edge of the pavement, satisfactory to the City Engineer. Applicant may enter into a deferred improvement agreement with City of San Diego of the improvement along its frontage on Beyer Boulevard.

18. Prior to the issuance of any construction permit, the Owners/Permittees shall provide appropriate dedication at the western end of Foothill Road for construction of the cul-de-sac as shown on Exhibit "A" and shall assure by permit and bond, construction of 40-foot curb radius cul-de-sac including curb, gutter and sidewalk within 10-foot curb to propertyline distance, satisfactory to the City Engineer.

**ENGINEERING REQUIREMENTS:**

19. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the Owners/Permittees to provide the right-of-way 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.

20. Prior to the issuance of any construction permit, the Owners/Permittees shall incorporate and show the type and location of all post-construction Best Management Practices [BMP's] on the final construction drawings, in accordance with the approved Water Quality Technical Report.

21. Prior to the issuance of any construction permit, the Owners/Permittees shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance.

22. Prior to the issuance of any construction permit, the Owners/Permittees shall incorporate any construction BMP's necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.

23. This Permit shall comply with the provisions of Tentative Map No. 119405, Public Right-of-Way Vacation No. 139967, and Easement Abandonment No. 139970.

24. Prior to the issuance of any construction permit, the Owners/Permittees shall assure by permit and bond the replacement of the curb with City standard curb and gutter, adjacent to the site on Beyer Boulevard and Foothill Road satisfactory to the City Engineer.

25. The drainage system proposed for this development is private and subject to approval by the City Engineer.

26. All driveways and curb openings shall comply with City Standard Drawings G-14A, G-16 and SDG-100.

27. Prior to the issuance of any building permit, the Owners/Permittees 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.

28. 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 SWRC.

29. 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.

30. Prior to the issuance of a building permit, the Owners/Permittees shall assure by permit and bond the replacement of the damaged sidewalk adjacent to the site on Beyer Boulevard, satisfactory to the City Engineer.

31. Prior to the issuance of any building permit, the Owners/Permittees shall obtain an encroachment maintenance and removal agreement for the proposed private storm drain in the public right-of-way shown on Exhibit "A."

**LANDSCAPE REQUIREMENTS:**

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

33. Prior to issuance of any engineering permits for grading, construction documents for slope planting 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" (including Environmental conditions).

34. 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 Permittees 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.

35. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owners/Permittees to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment, and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

36. Prior to issuance of any building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A."

37. Prior to issuance of any engineering permits for right-of-way or private street or driveway improvements, construction documents for said improvements shall be submitted to the City Manager for approval. Improvement plans shall take into account a 40 square feet 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. All required landscape shall be maintained in a disease, weed, and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit. The Owners/Permittees shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Land Development Manual.

39. If any required landscape (including, but not limited to, existing or new plantings, hardscape, landscape features) indicated on the approved plans is damaged or removed during demolition, it shall be repaired or replaced in kind and equivalent size per the approved plans within thirty days of completion of construction by the Permittees. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available or an increased number) to the satisfaction of the City Manager.

**PLANNING/DESIGN REQUIREMENTS:**

40. No fewer than 177 off-street parking spaces per lot shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

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

48. The applicant shall post a copy of the approved discretionary permit or Tentative Map in the sales office for consideration by each prospective buyer.

49. 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.



50. 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 Owners/ Permittees, 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.

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 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.

55. 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:**

56. Prior to the issuance of any building permits, the Owners/Permittees shall assure, by permit and bond, the design and construction of all sewer facilities necessary to serve this development.

57. Prior to the issuance of any grading permits, the Owners/Permittees shall abandon all on-site public sewer mains or they will be converted to private, satisfactory to the Director of the Metropolitan Wastewater Department. Any associated public easements shall be vacated, satisfactory to the Director of the Metropolitan Wastewater Department.

58. Prior to the issuance of any building or engineering permits, the Owners/Permittees shall provide, satisfactory to the Director of the Metropolitan Wastewater Department, CC&Rs for the operation and maintenance of private sewer facilities that serve more than one ownership.
59. Prior to the Owners/Permittees obtaining an Encroachment Maintenance and Removal Agreement, no private sewer facilities shall be in or over any public right of way.
60. The Owners/Permittees shall design and construct all proposed private sewer facilities to conform with the most current State, Federal and City Regulations, and to the requirements of the most current edition of the Metropolitan Wastewater Department Sewer Design Guide or the California Uniform Plumbing Code as adopted by the City of San Diego.
61. The Owners/Permittees shall design any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.
62. 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:**

63. Prior to the issuance of any building permits, the Owners/Permittees shall assure, by permit and bond, the design and construction of dual 12-inch mains in Drive A from Beyer Boulevard to Drive C and a 12-inch loop water system from Drive C to Drive F, in a manner satisfactory to the Director of the Water Department and the City Engineer.
64. Prior to the issuance of any building permits, the Owners/Permittees will be required to relocate the water service and meter, which serves the adjacent property to the west, to an acceptable location within the cul-de-sac, in a manner satisfactory to the Director of the Water Department and the City Engineer.
65. Prior to the issuance of any building permits, the Owners/Permittees shall assure, by permit and bond, the design and construction of new water service(s) outside of any driveway, and the disconnection at the water main of all existing unused services adjacent to the site, in a manner satisfactory to the Director of the Water Department and the City Engineer.
66. Prior to the issuance of any building permits, the Owners/Permittees shall grant adequate water easements over all public water facilities that are not located within fully improved public rights-of-way, satisfactory to the Director of the Water Department and the City Engineer. Easements, as shown on approved Exhibit "A" will require modification based on standards at final engineering.
67. Prior to the issuance of any building permits, the Owners/Permittees shall apply for a plumbing permit for the installation of appropriate private back flow prevention

device(s) on each water service (domestic, fire, and irrigation), in a manner satisfactory to the Director of the Water Department, the City Engineer, and the Cross Connection Supervisor in the Customer Support Division of the Water Department.

68. Prior to the issuance of any building permits, the Owners/Permittees shall provide CC&Rs for the operation and maintenance of any on-site private water facilities that serve or traverse more than a single dwelling unit or common area.

69. Prior to the issuance of any certificates of occupancy, the Owners/Permittees shall provide keyed access to Water Operations Division, in a manner satisfactory to the Director of the Water Department, on each gate located within any easement containing public water facilities. The City will not be held responsible for any issues that may arise relative to the availability of keys.

70. Prior to the issuance of any certificates of occupancy, the Owners/Permittees shall install fire hydrants at locations satisfactory to the Fire Department, the Director of the Water Department, and the City Engineer.

71. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Director of the Water Department and the City Engineer.

72. The Owners/Permittees agree to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities shall be modified at final engineering to comply with standards.

**PARK DEVELOPMENT REQUIREMENTS:**

73. The park requirements for this proposed development will be satisfied through payment of the established per unit Development Impact Fees [DIF] at time of building permit issuance.

**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 March 8, 2005 by Resolution No. R-300202.

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.

MARKER FOOTHILL, LLC  
Owners/Permittees

By \_\_\_\_\_

By \_\_\_\_\_

BENITO HERNANDEZ  
Owners/Permittees

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SYLVIA HERNANDEZ  
Owners/Permittees

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

PERMIT/OTHER – Permit Shell 11-01-04