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RESOLUTION NUMBER R- 306961

DATE OF FINAL PASSAGE JUL 26 2011

A RESOLUTION APPROVING SITE DEVELOPMENT PERMIT NO. 388242 FOR THE OTAY MESA EAST – PROJECT NO. 108628

WHEREAS, Gerald Handler, Trustee of the Handler Trust UDT, Owner/Permittee, filed an application with the City of San Diego for Site Development Permit (SDP) No. 388242 for the development of an approximately 21.35-acre site that is currently vacant, into commercial lots and open space, known as the Otay Mesa East project (Project). The project site is located in the 6100 block of Otay Mesa Road (temporarily addressed as 6175 Otay Mesa Road) west of Heritage Road, in the AR-1-1 zone, which is proposed to be rezoned to the Otay Mesa Development District-Commercial (OMDD-C) zone, within the Otay Mesa Community Plan Area; and

WHEREAS, on September 16, 2003, the City Council of the City of San Diego approved an earlier version of the Otay Mesa East project, Project No. 3159, for a commercial subdivision on a 45.5-acre site, including specifically Resource Protection Ordinance Permit No. 8163 (Original Permit); and

WHEREAS, on August 26, 2009, the California Department of Transportation (Caltrans) acquired approximately 24.1-acres of the 45.5-acre site through condemnation for the realignment of State Route 905 (SR 905); and

WHEREAS, the property is legally described as Parcel A, portion of the northeast quarter of the northwest quarter of Section 32, Township 18 South, Range 1 West, San Bernardino and Meridian, in the County of San Diego, State of California, according to the Official Plat thereof,

excepting therefrom the Northerly 40.00 feet ("Otay Mesa Road") as described in that certain deed to the City of San Diego, A Municipal Corporation, filed in the Office of the County Recorder of said County May 27, 1983, as File No. 83-177720 of Official Records, and all that portion thereof taken by the State of California in that certain Final Order of Condemnation issued out of Superior Court Case No. 37-2008-0008061-CU-EI-CTL, a Certified Copy of which Recorded November 9, 2009, as File No. 2009-0624504, Official Records; and Parcel B: Portion of the Northeast Quarter of the Northwest Quarter of Section 32, Township 18 South, Range 1 West, San Bernardino and Meridian, in the County of San Diego, State of California, according to the Official Plat thereof, excepting therefrom the Northerly 40.00 feet ("Otay Mesa Road") as described in that certain deed to the City of San Diego, A Municipal Corporation, filed in the Office of the County Recorder of said County May 27, 1983, as File No. 83-177720 of Official Records, all that portion thereof taken by the State of California in that certain Final Order of Condemnation issued out of Superior Court Case No. 37-2008-0008061-CU-EI-CTL, a Certified Copy of which Recorded November 9, 2009, as File No. 2009-0624504, Official Records, and all that portion thereof described deeded to the State of California Recorded February 2, 2010, as File No. 2010-00054943, Official Record; and

WHEREAS, on July 21, 2006, the Owner/Permittee filed an application for an Extension of Time (EOT) for the Original Permit prior to its expiration. However, the application for the EOT was never heard by the City Council and in accordance with San Diego Municipal Code section 126.0111, the Original Permit could not be extended beyond September 2009. Therefore, a new SDP is required for the Project; and

WHEREAS, on April 7, 2011, the Planning Commission of the City of San Diego considered SDP No. 388242, and pursuant to Resolution No. 4689-PC voted to recommend City Council approval of an SDP for a three-year period for the Project with the understanding that the appropriate vehicle to accomplish that recommendation would be determined prior to the Project coming before the City Council; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on JUL 26 2011, 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 SDP No. 388242:

**A. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0504(a)**

**1. Findings for all Site Development Permits**

**a. The proposed development will not adversely affect the applicable land use plan.** The proposed project would result in 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer pump station, and one lot for a private driveway) along Otay Mesa Road for future development, and an approximately 7.4-acre non-buildable portion of the site located south of SR 905, a portion of which is required to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the Multiple Habitat Planning Area (MHPA).

The project site is zoned AR-1-1 within the Otay Mesa Development District (OMDD) and the Otay Mesa Community Plan (OMCP). The site is designated for Specialized Commercial uses within the OMCP, which defers development requirements to the standards and provisions of the OMDD. The proposed commercial subdivision on a 21.35-acre vacant site includes a rezone from AR-1-1 to OMDD-C (Rezone). The proposed subdivision to create commercial lots for future development is not requesting and does not require any deviations to the development regulations in the OMDD. The proposed project would establish 5 commercial lots for future development and include infrastructure needed for the development. The future development on the individual lots would comply with the OMDD development regulations. With the adoption of the Rezone associated with this action, the proposed project and its design and improvements would be consistent with the policies, goals, and objectives of the Otay Mesa Community Plan and the General Plan. Therefore, the proposed project will not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.** The proposed project would provide 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer pump station, and one lot for a private driveway) along Otay Mesa Road for future development, and an approximately 7.4-acre non-buildable portion of the site located south of the State Route (SR) 905, a portion of which is required to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the MHPA. The 21.35-acre vacant site is currently zoned AR-1-1 within the OMDD and the OMCP designates the site for Specialized Commercial use. The Owner/Permittee has requested to rezone the project site from AR-1-1 to OMDD-C (Rezone).

With the adoption of the Rezone, the proposed subdivision and its design and improvements are consistent with the policies, goals, and objectives of the OMDD, OMCP, the San Diego Municipal Code, and the General Plan.

Project and permit conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety, and general welfare of persons residing, working and recreating in the surrounding area. The future development of the proposed project will be required to comply with the development regulations of the OMDD and will be required to obtain building permits to show that project construction will comply with all applicable Building and Fire Code requirements. Therefore, the proposed project will not be detrimental to the public health, safety and welfare.

**c. The proposed development will comply with the applicable regulations of the Land Development Code.** The proposed project would provide 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer pump station, and one lot for a private driveway) along Otay Mesa Road for future development, and an approximately 7.4-acre non-buildable portion of the site located south of the SR 905, a portion of which is to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the MHPA. The 21.35-acre vacant site is currently zoned AR-1-1 within the OMDD and the

OMCP designates the project site for Specialized Commercial uses. The 21.35-acre vacant site is currently zoned AR-1-1 within the OMDD and the OMCP designates the site for Specialized Commercial use. The Owner/Permittee has requested to rezone the project site from AR-1-1 to OMDD-C (Rezone).

The proposed development is not requesting and does not require any deviations to the development regulations in the Land Development Code. With the adoption of the Rezone, the proposed project and its design and improvements are consistent with the Land Development Code. Therefore, the proposed project will comply with the applicable regulations of the Land Development Code (LDC).

**B. SUPPLEMENTAL FINDINGS - ENVIRONMENTALLY SENSITIVE LANDS  
SDMC SECTION 126.0504(b)**

**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 would provide 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer pump station, and one lot for a private driveway) along Otay Mesa Road for future development. The 21.35-acre vacant site has historically been used for agricultural purposes but is currently dominated by non-native grass species. Approximately 13.95-acres of the site along Otay Mesa Road currently contains a grade differential of 15 feet and slopes gently from a 520 foot above mean sea level (AMSL) from the western property line towards the east to a 505 foot AMSL at the eastern property line. The surrounding properties to the north consist of multi-family residential development, commercial/office retail development, and open space; to the west is a proposed multi-family residential development; to the east is open space; and to the south is the realignment of SR 905, which is currently under construction.

An approximately 7.4-acre non-buildable portion of the site is located south of the SR 905, a portion of which is to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the MHPA. A building restrictive easement is required to be recorded over this lot since the condemnation for the realignment of SR 905 eliminated access to this lot. This activity is covered under the Otay Mesa East Mitigated Negative Declaration (MND), Project No. 3159. The prior environmental documents adequately covered this activity as part of the previously approved project. The Mitigation Monitoring and Reporting Program (MMRP) for the project, which is required to be implemented as a condition of the SDP includes protocols and measures for protection of the onsite biological resources and a vernal pool management plan. Therefore, the site is physically suitable for the type and density of 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 proposed project would provide 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer

pump station, and one lot for a private driveway) along Otay Mesa Road for future development. The 21.35-acre site is currently vacant and has historically been used for agricultural purposes but is currently dominated by non-native grass species. Approximately 13.95-acres of the site along Otay Mesa Road currently contains a grade differential of 15 feet and slopes gently from a 520 foot AMSL from the western property line towards the east to a 505 foot AMSL at the eastern property line.

An approximately 7.4-acre non-buildable portion of the site is located south of the SR 905, which is to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the MHPA. A building restrictive easement is required to be recorded over this lot since the condemnation for the realignment of SR 905 eliminated access to this lot. This activity is covered under the Otay Mesa East MND, Project No. 3159. The MMRP for the project include protocols and measures for protection of the onsite biological resources, a vernal pool management plan, and pre-and post-construction water quality best management practices (BMPs). BMPs include the use of a combination of site design, source control, and treatment measures. The site is not located within and or containing flood hazards or fire hazards. Therefore, the proposed project 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.

**3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.** The proposed project would provide 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer pump station, and one lot for a private driveway) along Otay Mesa Road for future development. The 21.35-acre site is currently vacant and has historically been used for agricultural purposes but is currently dominated by non-native grass species. Approximately 13.95-acres of the site along Otay Mesa Road currently contains a grade differential of 15 feet and slopes gently from a 520 foot AMSL from the western property line towards the east to a 505 foot AMSL at the eastern property line. The surrounding properties to the north contain multi-family residential development, commercial/office/retail development, and open space; to the west is a proposed multi-family residential development; to the east is open space; and to the south is the realignment of SR 905, which is currently under construction.

An approximately 7.4-acre non-buildable portion of the site is located south of the SR 905, which is to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the MHPA. A building restrictive easement is required to be recorded over this lot since the condemnation for the realignment of SR 905 eliminated access to this lot. This activity is covered under the Otay Mesa East MND, Project No. 3159. The MMRP for the project includes pre-and post-construction protocols and measures for protection of the onsite and adjacent biological resources, historical resources (archaeology) and paleontological resources, a vernal pool management plan, pre-and post-construction water quality BMPs. BMPs include the use of a combination of site design, source control, and treatment measures. Therefore, the proposed project has been 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 (MSCP) Subarea Plan.** The proposed project would provide 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer pump station, and one lot for a private driveway) along Otay Mesa Road for future development. The 21.35-acre vacant site has historically been used for agricultural purposes but is currently dominated by non-native grass species. An approximately 7.4-acre non-buildable portion of the site is located south of the SR 905, which is to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the MHPA. A building restrictive easement is required to be recorded over this lot since the condemnation for the realignment of SR 905 eliminated access to this lot. This activity is covered under the Otay Mesa East MND, Project No. 3159. The MMRP for the project includes pre-and post-construction protocols and measures for protection of the onsite and adjacent biological resources, historical resources (archaeology) and paleontological resources, a vernal pool management plan, pre-and post-construction water quality BMPs. The standards and provisions of the City of San Diego's MSCP Subarea Plan have been incorporated within the mitigation measures. Therefore, the proposed project is consistent with the City of San Diego's MSCP Subarea Plan and the MHPA Land Use Adjacency Guidelines.

**5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.** The project site is located in the 6100 block of Otay Mesa Road (temporarily addressed as 6175 Otay Mesa Road) west of Heritage Road. The project site is located approximately 2.75 miles from the Tijuana River and approximately 7.25 miles from the Pacific Ocean, and thus the proposed project 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.** The proposed project would provide 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer pump station, and one lot for a private driveway) along Otay Mesa Road for future development. An approximately 7.4-acre non-buildable portion of the site is located south of the SR 905, and is required to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the MHPA. This activity is covered under the Otay Mesa East MND, Project No. 3159. The MMRP for the project include protocols and measures for protection of the onsite biological resources, a vernal pool management plan, pre-and post-construction water quality best management practices (BMPs). BMPs include the use of a combination of site design, source control, and treatment measures. 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.

**C. OTAY MESA DEVELOPMENT DISTRICT - SDMC SECTION 1517.0203(c)**

**1. The application is complete and conforms with all City regulations, policies, guidelines, design standards and density.** The application for the Project is complete. The proposed development is not requesting and does not require any deviations to the development regulations. With the adoption of the associated Rezone, the proposed subdivision and its design and improvements are consistent with the policies, goals, and objectives of the OMDD, Otay Mesa Community Plan, the San Diego Municipal Code, and the General Plan. Therefore, the application for the proposed project is complete and conforms with all City regulations, policies, guidelines, design standards and density.

**2. The proposed use and project design meet the purpose and intent of the Otay Mesa Development District and the Otay Mesa Community Plan.** The project site is zoned AR-1-1 within the OMDD and the OMCP. The site is designated for Specialized Commercial uses within the OMCP, which defers development requirements to the standards and provisions of the OMDD. The proposed commercial subdivision on a 21.35-acre vacant site includes a rezone from AR-1-1 to OMDD-C (Rezone). The proposed project to create commercial lots for future development is not requesting and does not require any deviations to the OMDD development regulations. The proposed project would establish 5 commercial lots for future development and include infrastructure needed for the development. The future development on the individual lots would comply with the OMDD development regulations. With the adoption of the Rezone associated with this action, the proposed project and its design and improvements would be consistent with the policies, goals, and objectives of the OMCP and the General Plan. Therefore, the proposed project would meet the purpose and intent of the Otay Mesa Development District and the OMCP.

**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.** With the adoption of the Rezone, the proposed project and its design and improvements are consistent with the policies, goals, and objectives of the OMDD, Otay Mesa Community Plan, the San Diego Municipal Code, and the General Plan.

Project and permit conditions have been determined by the decision-maker as necessary to avoid adverse impacts upon the health, safety, and general welfare of persons residing, working and recreating in the surrounding area. The future development associated with the project will be required to comply with the development regulations of the OMDD and will be required to obtain building permits to show that project construction will comply with all applicable Building and Fire Code requirements. Therefore, the proposed project 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.



**4. The proposed use will comply with the relevant regulations in the Municipal Code.** The proposed project would provide 8 lots for commercial use and open space (5 commercial lots, one open space lot, one lot for a private underground sewer pump station, and one lot for a private driveway) along Otay Mesa Road for future development. An approximately 7.4-acre non-buildable portion of the site is located south of SR 905, and is required to be placed in a covenant of easement for protection of the 22 vernal pools and the area within the MHPA. The 21.35-acre site is currently zoned AR-1-1 within the OMDD and the Otay Mesa Community Plan designates the project site for Specialized Commercial uses.

The proposed development is not requesting and does not require any deviations to the development regulations. With the adoption of the Rezone, the proposed project and its design and improvements are consistent with the San Diego Municipal Code.

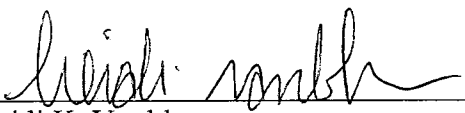
**5. A plan for the financing of public facilities as provided in San Diego Municipal Code Section 1517.0204 (Financing of Public Facilities) of the Otay Mesa Development District has been approved by the City Engineer.** The facilities required for the Otay Mesa community are financed through development fees and developer contributions. The proposed commercial subdivision is required as a condition of the SDP to install on-site improvements such as streets (Street B & C), storm drains, and water and sewer, power and telephone utilities (to be undergrounded within the subdivision). The required off-site improvements include the construction of additional eastbound and westbound left turn lanes at the intersection of Otay Mesa Road and Ocean View Hills Parkway.

Facilities Benefit Assessments (FBA) or Development Impact Fees (DIF) are charged and paid at the time of the building permit. This money is used by the City to provide needed public facilities such as streets, libraries, parks, and fire stations. The Fiscal Year 2007 Otay Mesa Public Facilities Financing Plan was adopted on November 22, 2006 by Resolution No. 302040. Therefore, the proposed commercial subdivision complies with the provisions of San Diego Municipal Code Section 1517.0204.

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

BE IT FURTHER RESOLVED, by the Council of the City of San Diego that Site Development Permit [SDP] No. 388242 is granted to Gerald Handler, Trustee of the Handler Trust UDT, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JAN GOLDSMITH, City Attorney

By   
Heidi K. Vonblum  
Deputy City Attorney

HKV:hm  
07/07/2011  
Or.Dept. DSD