

RESOLUTION NUMBER R- **307142**

DATE OF FINAL PASSAGE **NOV 15 2011**

RESOLUTION DENYING THE APPEAL FOR THE ERMA ROAD APARMENTS PROJECT NO. 217843 [MMRP] AND MODIFYING THE PLANNING COMMISSION DECISION BY APPROVING MODIFIED SITE DEVELOPMENT PERMIT NO. 861049 AND CANCELING SITE DEVELOPMENT PERMIT NO. 697691 AND PLANNED DEVELOPMENT PERMIT NO. 571238 AND ADOPTING THE FINDINGS OF THE PLANNING COMMISSION.

WHEREAS, FENTON ERMA ROAD, LLC, a California Limited Liability Corporation, Owner and Permittee, filed an application with the City of San Diego for a Site Development Permit to cancel Site Development Permit No. 697691 and Planned Development Permit No. 571238, and to rescind Vesting Tentative Map No. 571214, to allow for the construction of 114 (for rent) residential units (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 861049), on portions of a 3.92-acre site; and

WHEREAS, the project site is located at 9889 Erma Road, north of Mira Mesa Boulevard and west of Scripps Ranch Boulevard. The 3.92-acre site is located in the RM-2-5 Zone within the Scripps Miramar Ranch Community Plan. The site is within the Airport Environs Overlay Zone (AEOZ) for the Airport Influence Area-Review Area 2, the Overflight Notification Area and the Federal Aviation Administration (FAA) Part 77 Noticing Area for the Marine Corps Air Station (MCAS) Miramar, Scripps Miramar Ranch Facilities Benefit Assessment District, Residential Tandem Parking Overlay Zone, and Council District 5; and

WHEREAS, the project site is legally described as Parcel 2 of Parcel Map No. 10259 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, July 21, 1980 as File No. 80-229350 of Official Records; and

WHEREAS, on July 14, 2011, the Planning Commission of the City of San Diego considered and voted to approve Site Development Permit No. 861049 and to cancel Site Development Permit No. 697691 and Planned Development Permit No. 571238, and considered and voted to approve the rescission of Vesting Tentative Map No. 571214, pursuant to the Land Development Code of the City of San Diego; and

WHEREAS, the Owner/Permittee filed an appeal of the Planning Commission's decision to the City Council; and

WHEREAS, the matter was set for public hearing on November 15, 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; and

WHEREAS, at the November 15, 2011, appeal hearing, the City Council modified Affordable Housing Conditions 15 and 16 of Site Development Permit No. 861049, as follows:
(1) Condition 15 will state: On or before December 1, 2011, Owner/Permittee shall enter into a written agreement with the San Diego Housing Commission and the City of San Diego, as approved by the General Counsel for the San Diego Housing Commission and the City Attorney, agreeing to pay, upon the execution of the agreement, the sum of \$250,000 (Two Hundred Fifty Thousand Dollars) to the San Diego Housing Commission, in full and complete satisfaction of the inclusionary requirements for this Site Development Permit under the City's Inclusionary Affordable Housing Regulations (Chapter 14, Article 2, Division 13 of the San Diego Municipal

Code), as they now exist or as they may be amended in the future; and (2) Condition 16 was deleted; and

WHEREAS, pursuant to City Charter section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and 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 activity is covered under the Erma Road Mitigated Negative Declaration (MND) No. 137944. In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15162(a): (1) no substantial changes are proposed to the project which would require major revisions of the previous MND; (2) no substantial changes occur with respect to the circumstances under which the project is undertaken that would require any revisions to the previous MND; and (3) there is no new information of substantial importance that was not known and could not have been known at the time the previous MND was certified. Therefore, no subsequent environmental document is required, in that no new additional impacts and/or mitigation measures are required beyond those that were analyzed in the original environmental document. All of the impacts were adequately addressed and disclosed in previously certified MND No. 137944; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego as follows:

That the Council adopts the following written Findings, adopted by the Planning Commission on July 14, 2011:

A. Site Development Permit - Section 126.0504

1. Findings for all Site Development Permits

a. The proposed development will not adversely affect the applicable land use plan. The proposed project site is located at 9889 Erma Road, north of Mira Mesa Boulevard and west of Scripps Ranch Boulevard. The 3.92-acre site is located in the RM-2-5 Zone within the Scripps Miramar Ranch Community Plan. The community plan designates the project site for High Medium Density Residential (15-29 dwelling units per acre). The proposed project site, occupying 3.92-acres, could accommodate 114 dwelling units based on the underlining zone, and 59-114 dwelling units based on the community plan.

The project proposes the construction of 114 (for rent) residential units within four buildings, three-story and two-story above garages, and totaling approximately 158,750 square feet. The complex includes a leasing facility, clubhouse, and outdoor pool and recreation areas. The project includes 60 one-bedroom and 54 two-bedroom units, 238 parking spaces, including 83 spaces within garages, 42 carport spaces, 99 open stall spaces, and 14 tandem spaces. Vehicular access to the site is proposed from one driveway on Erma Road with the main drive aisle extending north to south through the site, and the buildings would have vehicular courtyards connecting to the main drive aisle to access each parking space and or garages.

As a component, the proposed project will conform to the Council Policy 900-14 criteria by generating 50-percent or more of the projected total electrical energy consumption on site through renewable energy resources (i.e. photovoltaic); however, the applicant is proposing generating 100-percent of the projected total electrical energy consumption on site through renewable energy resources. With the approval of the requested deviations, the project meets all applicable regulations and policy documents, and the project is consistent with the recommended land use designation, design guidelines, and development standards in effect for this site per the adopted amended Scripps Miramar Ranch Community Plan, the Land Development Code (LDC), Council Policies, and the General Plan. Therefore, the proposed development 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 project proposes the construction of 114 (for rent) residential units within four buildings, three-story and two-story above garages, and totaling approximately 158,750 square feet. In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15162(a) the previously certified Mitigated Negative Declaration (MND) No. 137944 for the Erma Road Project No. 137944 adequately addressed and disclosed all impacts. The project would be required to comply and/or implement all mitigation measures (Biological Resources, Public Utilities [Solid Waste Generation/Disposal], and Noise) outlined within the previously certified MND.

The permit for the proposed development includes various conditions and referenced exhibits of approval relevant to achieving project compliance with the applicable regulations of the LDC 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 conditions in effect for the subject property as described in SDP No. 861049, and other regulations and guidelines pertaining to the subject property per the LDC. Therefore, the proposed development 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 site is located at 9889 Erma Road, north of Mira Mesa Boulevard and west of Scripps Ranch Boulevard. The 3.92-acre site is located in the RM-2-5 Zone within the Scripps Miramar Ranch Community Plan. The community plan designates the project site for High Medium Density Residential (15-29 dwelling units per acre). The proposed project site, occupying 3.92-acres, could accommodate 114 dwelling units based on the underlining zone, and 59-114 dwelling units based on the community plan.

The project proposes the construction of 114 (for rent) residential units within four buildings, three-story and two-story above garages, and totaling approximately 158,750 square feet. With the approval of the requested deviations, the project meets all applicable regulations and policy documents, and the project is consistent with the recommended land use designation, design guidelines, and development standards in effect for this site per the adopted amended Scripps Miramar Ranch Community Plan, the LDC, Council Policies, and the General Plan. Therefore, the proposed development will comply with the applicable regulations of the LDC.

2. Supplemental Findings--Deviations for Affordable/In-Fill Housing Projects and Sustainable Buildings

a. The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City, and/or the proposed development will materially assist in reducing impacts associated with fossil fuel energy use by utilizing alternative energy resources, self-generation and other renewable technologies (e.g. photovoltaic, wind, and/or fuel cells) to generate electricity needed by the building and its occupants. The project proposes the construction of 114 (for rent) residential units within four buildings, three-story and two-story above garages, and totaling approximately 158,750 square feet. As a component, the proposed project will conform to the Council Policy 900-14 criteria by generating 50-percent or more of the projected total electrical energy consumption on site through renewable energy resources (i.e. photovoltaic); however, the applicant is proposing generating 100-percent of the projected total electrical energy consumption on site through renewable energy resources. Among the many other sustainable design features included in the project are the use of sustainable construction materials and practices. Operational sustainable features include the use of reclaimed water for landscape, drought tolerant and native plant materials, and natural stormwater filtration via planting areas. All of the units are designed such that 75-percent of occupied space will utilize natural light. Therefore, the proposed development will materially assist in reducing impacts associated with fossil fuel energy use by utilizing alternative energy resources, self-generation and other renewable technologies (e.g. photovoltaic, wind, and/or fuel cells) to generate electricity needed by the building and its occupants.

b. The development will not be inconsistent with the purpose of the underlying zone. The proposed project site is located at 9889 Erma Road, north of Mira Mesa Boulevard and west of Scripps Ranch Boulevard. The 3.92-acre site is located in the RM-2-5 Zone within the Scripps Miramar Ranch Community Plan. The community plan designates the project site for High Medium Density Residential (15-29 dwelling units per acre). The proposed project site, occupying 3.92-acres, could accommodate 114 dwelling units based on the underlining zone, and 59-114 dwelling units based on the community plan.

The project proposes the construction of 114 (for rent) residential units within four buildings, three-story and two-story above garages, and totaling approximately 158,750 square feet. With the approval of the requested deviations, the project meets all applicable regulations and policy documents, and the project is consistent with the recommended land use designation, design guidelines, and development standards in effect for this site per the adopted amended Scripps Miramar Ranch Community Plan, the LDC, Council Policies, and the General Plan. Therefore, the proposed development will not be inconsistent with the purpose of the underlying zone.

c. 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 proposed project includes a request for deviations to the front and interior side yard setbacks, landscaping, and retaining wall heights. The property contains unusual circumstances that are not of the making of the applicant. The site is elongated and narrow in shape. The majority of the graded site is level with street grade; however, the site's south, east and west slopes contain varying topographic conditions. The project is an infill development located adjacent to established developments including two-story multi-family to the east and across Erma Road to the north, one- and three-story commercial office uses to the west, and a multi-level hotel use and commercial retail center to the south. The multi-family developments to the east are approximately 16-feet and 2-feet higher in grade than the subject site. The commercial office uses to the south are approximately 52-feet lower in grade and the commercial office uses to the west are approximately 28-feet lower in grade than the subject site.

Front Yard Setback deviation- request to observe a 15-foot minimum setback for 65-percent of the building where a maximum 50-percent is permitted. The project has been designed to be a pedestrian-oriented development with the front facades providing building offsets and varying color schemes, windows, doors and balconies facing the street. The buildings have been sited to be off-set, not parallel to the front property lines, to promote a visual interest and workability along the streetscape. In addition, the building siting addresses the varying topographic conditions and still meets the purpose and intent of the development regulations by providing building offsets and interest along the streetscape.

Interior Side Yard Setback deviations- request for a 10-foot 4-inch to 13-foot 11-inch west interior side yard for 15-percent of the total building width. This includes a portion of the buildings, open stall parking spaces, carports, transformer, trash enclosures, activity deck and retaining walls where a 28-foot 7-inch setback is required along the west interior side yard. In addition, the request includes a deviation for a 10-foot 9-inch

to 19-foot 8-inch east interior side yard for 24-percent of the total building width. This includes a portion of the buildings, open stall parking spaces, carports, transformer, trash enclosures, activity deck and retaining walls where a 28-foot 7-inch setback is required along the east interior side yard.

The site is elongated and narrow in shape, and the site's south, east and west slopes contain varying topographic conditions. The project encroachments are mitigated by the offset building designs, vehicular courtyards, and by the topography of the site which creates a natural buffer from the adjoining multi-family developments to the east and commercial office uses to the west. The building siting addresses the varying topographic conditions and still meets the purpose and intent of the development regulations by providing building offsets that allows for light and ventilation, while still maintaining a minimum buffer between the adjacent development.

Landscape deviation- request to use solar shade carport structures in-lieu of one tree within 30-feet of every parking space. The proposed carport structures would provide the same function as the required trees by providing shade for the surface parking area. The applicant is proposing generating 100-percent of the projected total electrical energy consumption on site through renewable energy resources. To achieve this goal, the carport structures have been designed to incorporate photovoltaic panels (solar panels) on the roof.

Retaining Wall Height deviation- request for a 1-foot 6-inch to 7-foot 6-inch high retaining wall within the front yard setback where a 3-foot high wall is permitted; and a 9-foot to 9-foot 6-inch high retaining wall within the east interior side yard setback and a 11-foot high retaining wall within the west interior side yard setback where 6-foot high walls are permitted within both interior side yard setbacks. The retaining walls within the front yard setback are to address the varying topographic conditions at the northwestern and northeastern corners of the site. The portion of the 7-foot 6-inch high retaining wall at the northeastern corner is not visible from the public right-of-way. The 9-foot to 11-foot high retaining walls within the southwestern and southeastern corners of the site are designed for stabilization of the grade and as structural walls supporting the observation/recreation deck that extends along the entire southern side of the property. Landscaping at the top and base of the retaining walls have been carefully designed for screening and to provide visual interest. Additionally, the portions of the walls in excess of six feet occur in areas not visible from any of the surrounding properties.

The requested deviations as it relates to the proposed design of the project, the property configuration with its varying topographic conditions, and the surrounding development, will result in a more desirable project that efficiently utilizes the site and still be able to meet the purpose and intent of the development regulations. 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 requested deviations also qualify as regulatory incentives or concessions proposed by the developer that results in identifiable, financially sufficient and actual cost reductions within the meaning of the Government Code.

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

BE IT FURTHER RESOLVED that the appeal of the Owner/Permittee is denied; the decision of the Planning Commission is modified; and Modified Site Development Permit No. 861049 is hereby GRANTED by the Council of the City of San Diego to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 861049, a copy of which is attached hereto and made a part hereof; and

BE IT FURTHER RESOLVED that Site Development Permit No. 697691 and Planned Development Permit No. 571238 are hereby CANCELED.

BE IT FURTHER RESOLVED that the activity is covered under the Erma Road Mitigated Negative Declaration (MND) No. 137944.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Leslie A. FitzGerald
Deputy City Attorney

LAF:jls
11/16/2011
Or.Dept:DSD
R-2012-272

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 15 2011.

ELIZABETH S. MALAND
City Clerk

By *Mary Zumaña*
Deputy City Clerk

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

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24001090

MODIFIED SITE DEVELOPMENT PERMIT NO. 861049
ERMA ROAD APARTMENTS - PROJECT NO. 217843 [MMRP]
CITY COUNCIL

This Modified Site Development Permit No. 861049 is granted by the Council of the City of San Diego to FENTON ERMA ROAD, LLC, a California Limited Liability Corporation, Owner and Permittee, pursuant to San Diego Municipal Code [SDMC] Section 126.0504. The 3.92-acre site is located at 9889 Erma Road, north of Mira Mesa Boulevard and west of Scripps Ranch Boulevard. The 3.92-acre site is located in the RM-2-5 Zone within the Scripps Miramar Ranch Community Plan. The site is within the Airport Environs Overlay Zone (AEOZ) for the Airport Influence Area-Review Area 2, the Overflight Notification Area and the Federal Aviation Administration (FAA) Part 77 Noticing Area for the Marine Corps Air Station (MCAS) Miramar, Scripps Miramar Ranch Facilities Benefit Assessment District, Residential Tandem Parking Overlay Zone, and Council District 5. The project site is legally described as: Parcel 2 of Parcel Map No. 10259 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, July 21, 1980 as File No. 80-229350 of Official Records.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners and Permittee for the construction of 114 (for rent) residential units; described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 14, 2011, on file in the Development Services Department.

The project shall include:

- a. Construction of 114 (for rent) residential units within four buildings, three-story and two-story above garages, and totaling approximately 158,750 square feet. The complex includes a leasing facility, clubhouse, and outdoor pool and recreation areas;
- b. Deviations Resulting in Identifiable, Financially Sufficient, and Actual Cost Reductions: *Front Yard Setback deviation*- to observe a 15-foot minimum setback for 65-percent of the building where a maximum 50-percent is permitted. *Interior Side*

Yard Setback deviations- a 10-foot 4-inch to 13-foot 11-inch west interior side yard for 15-percent of the total building width. This includes a portion of the buildings, open stall parking spaces, carports, transformer, trash enclosures, activity deck and retaining walls where a 28-foot 7-inch is required along the west interior side yard setback. In addition, the request includes a deviation for a 10-foot 9-inch to 19-foot 8-inch east interior side yard for 24-percent of the total building width. This includes a portion of the buildings, open stall parking spaces, carports, transformer, trash enclosures, activity deck and retaining walls where a 28-foot 7-inch is required along the east interior side yard setback. *Landscape deviation-* to use solar shade carport structures in-lieu of one tree within 30-foot of every parking space. *Retaining Wall Height deviation-* a 1-foot 6-inch to 7-foot 6-inch high retaining wall within the front yard setback where a 3-foot high wall is permitted; and a 9-foot to 9-foot 6-inch high retaining wall within the east interior side yard setback and a 11-foot high retaining wall within the west interior side yard setback where 6-foot high walls are permitted within both interior side yard setbacks;

- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking;
- e. A roof- and ground- mounted photovoltaic system consisting of solar panels sufficient to generate at least 50 percent of the project's projected energy consumption in accordance with Council Policy 900-14; and
- f. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.
- g. Approval of this Site Development Permit No. 861049, cancels Site Development Permit No. 697691 and Planned Development Permit No. 571238, and rescinds Vesting Tentative Map No. 571214.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. This permit expires on **November 15, 2014**. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all 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 Owner/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. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

5. The 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 Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

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

novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

11. Approval of this Site Development Permit No. 861049, cancels Site Development Permit No. 697691 and Planned Development Permit No. 571238, and rescinds Vesting Tentative Map No. 571214.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

13. The mitigation measures specified in the MMRP and outlined in Mitigated Negative Declaration No. 137944, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 137944, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

Biological Resources,
Public Utilities [Solid Waste Generation/Disposal], and
Noise

AFFORDABLE HOUSING REQUIREMENTS:

15. On or before December 1, 2011, Owner/Permittee shall enter into a written agreement with the San Diego Housing Commission and the City of San Diego, as approved by the General Counsel for the San Diego Housing Commission and the City Attorney, agreeing to pay, upon the execution of the agreement, the sum of \$250,000 (Two Hundred Fifty Thousand Dollars) to the San Diego Housing Commission, in full and complete satisfaction of the Inclusionary requirements for this Site Development Permit under the City's Inclusionary Affordable Housing Regulations (Chapter 14, Article 2, Division 13 of the San Diego Municipal Code), as they now exist or as they may be amended in the future.

16. [DELETED]

AIRPORT REQUIREMENTS:

17. Prior to the issuance of any construction permits, the Owner/Permittee shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration [FAA].

ENGINEERING REQUIREMENTS:

18. Prior to the issuance of any construction permits, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.

19. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications, satisfactory to the City Engineer.

20. Prior to the issuance of any construction permits, the Owner/Permittee 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, satisfactory to the City Engineer.

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-14B, G-16 and SDG-100.

23. Prior to the issuance of a building permit, the Owner/Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the SDMC in a manner satisfactory to the City Engineer.

24. 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. 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.

25. The Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement (EMRA), for D-25 curb outlets within the public right-of-way to the satisfaction of the City Engineer.

26. Prior to the issuance of grading permits, a geotechnical investigation report shall be required that specifically addresses the proposed grading plans and cites the City's Job Order No. and Drawing No. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over-excavation depth, and limits of remedial grading.

LANDSCAPE REQUIREMENTS:

27. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A," on file in the Office of the Development Services Department.

28. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way improvements shall be submitted to the Development Services Department for approval. Improvement plans shall take into account a 40 sq-ft 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.

29. In the event that a foundation only permit is requested by the Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as "landscaping area."

30. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall

be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department. Construction plans shall take into account a 40 sq-ft area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)5.

31. Prior to issuance of any construction permits for buildings, a water budget shall be provided in accordance with the Water Conservation Requirements-Section 142.0413, Table 142-04I. An irrigation audit shall be submitted consistent with Section 2.7 of the Landscape Standards of the Land Development Manual. The Irrigation audit shall certify that all plants, irrigation systems, and landscape features will be installed and operated as approved by the Development Services Department prior the issuance of a Certificate of Occupancy.

32. The Permittee or subsequent Owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

33. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

34. The Permittee or subsequent Owner shall be responsible for the installation and maintenance of all landscape improvements consistent with the Land Development Code: Landscape Regulations and the Land Development Manual: Landscape Standards. Invasive species are prohibited from being planted adjacent to any canyon, water course, wet land or native habitats within the city limits of San Diego. Invasive plants are those which rapidly self propagate by air born seeds or trailing as noted in section 1.3 of the Landscape Standards.

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 unless specifically noted in this Permit.

36. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

37. 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 Owner/Permittee.

38. Prior to the issuance of building permits, construction documents shall fully illustrate the incorporation of a roof- and ground- mounted photovoltaic system consisting of solar panels sufficient to generate at least 50 percent of the project's projected energy consumption, in accordance with Council Policy 900-14.

39. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

40. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS:

41. The Owner/Permittee shall maintain a minimum of 238 automobile spaces (including 2 standard accessible spaces and 1 van accessible space), 11 motorcycle spaces, and 52 bicycle spaces with rack(s) and 1 loading/unloading zone on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces and aisle widths shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

42. Prior to the issuance of the certificate of occupancy, the Owner/Permittee shall assure by permit and bond, and construct a maximum of 25-foot wide driveway at the main entrance on Erma Road, satisfactory to the City Engineer.

43. Prior to the issuance of the first building permit, the Owner/Permittee shall pay fifty percent of the cost not to exceed \$60,000 for improvements at the intersection of Scripps Ranch Boulevard and Erma Road. The improvements at the intersection will include widening by two feet within the existing right-of-way on the southwest corner, relocation of existing utilities, modification to the traffic signal, removal of the existing median on the north leg of the intersection, repair to the existing pavement and restriping of the road to accommodate a northbound u-turn. Additional improvements at the intersection shall include the replacement of the existing video detection camera on the east leg of the intersection (for the westbound approach) and the installation of a "No Turn on Red" (R10-11) sign on the west leg of the intersection (for the eastbound approach), satisfactory to the City Engineer.

44. The Owner/Permittee shall provide and maintain a minimum of 10-foot visibility triangle area on both sides of the driveway along the property line on Erma Road. No obstacles higher than 36-inches shall be located within this area (e.g. landscape, hardscape, walls, and shrubs).

WASTEWATER REQUIREMENTS:

45. All onsite sewer facilities shall be private.

46. Prior to the issuance of any certificate of occupancy, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement for all private utilities installed in or over the public sewer easement.

47. The Owner/Permittee shall design and construct all proposed public sewer facilities in accordance with established criteria in the current edition of the City of San Diego Water and Sewer Facility Design Guidelines and City regulations, standards and practices.

48. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Plumbing Code and shall be reviewed as part of the building permit plan check.

49. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer laterals.

WATER REQUIREMENTS:

50. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of any new water service(s) outside of any driveway, and the disconnection at the water main of the existing unused water service adjacent to the project site, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

51. Prior to the issuance of any building permits, the Owner/Permittee 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 Public Utilities and the City Engineer.

52. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond the design and construction of reclaimed water irrigation service(s), in a manner satisfactory to the Director of Public Utilities and the City Engineer.

53. Prior to the issuance of any certificates of occupancy, all public water facilities shall be complete and operational in a manner satisfactory to the Director of Public Utilities and the City Engineer.

54. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, and associated easements, as shown on approved Exhibit "A" shall be modified at final engineering to comply with standards.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed

by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this 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.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Council of the City of San Diego on November 15, 2011, and Resolution No. R-307142

Permit Type/PTS Approval No.: SDP/ 861049
Date of Approval: November 15, 2011

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Jeffrey A. Peterson
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

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

FENTON ERMA ROAD, LLC,
a California Limited Liability Corporation
Owner/Permittee

By _____
NAME:
TITLE:

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**