

RESOLUTION NUMBER R- 307237

DATE OF FINAL PASSAGE JAN 10 2012

A RESOLUTION APPROVING PLANNED DEVELOPMENT PERMIT NO. 609801 AND SITE DEVELOPMENT PERMIT NO. 896755 FOR THE OTAY-TIJUANA CROSS BORDER FACILITY – PROJECT NO. 169653.

WHEREAS, Otay-Tijuana Venture, LLC, Owner/Permittee filed an application with the City of San Diego for Planned Development Permit No. 609801 (PDP) and Site Development Permit No. 896755 (SDP) to resubdivide a property for a U.S. Customs and Immigration processing facility (Cross Border Facility), industrial office/warehouse uses, commercial uses, and hotel uses, and to construct certain off-site traffic improvements (Project); and,

WHEREAS, the project site is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, and is legally described as Lots 1 through 30 of Otay Business Park Map, No. 15548 in the Otay Mesa Development District (OMMD), Industrial Subdistrict; and

WHEREAS, on December 8, 2011, the Planning Commission of the City of San Diego considered PDP No. 609801 and SDP No. 896755. Although Planning Commission Resolution No. 4753-PC states that the Planning Commission recommended “adoption and approval of . . . Planned Development Permit No. 609801 [and] Site Development Permit No. 896755. . . ,” the motion made by the Planning Commission was with the with the proviso that additional information regarding the infeasibility of traffic mitigation measures identified in Environmental Impact Report No. 169653 and the statement of overriding considerations be provided to the City Council; and

WHEREAS, although PDP No. 609801 and SDP No. 896755 contains an informational item that states that the applicant may request the City to enter into a reimbursement agreement with respect to construction of transportation improvements identified for certain conditions if the “applicant can demonstrate that construction . . . provides transportation capacity above what is necessary to serve the proposed development . . . ,” all of the conditions identified in PDP No. 609801 and SDP No. 896755 are included because there is a nexus between the condition and the project’s impacts and the conditions are roughly proportional to those impacts; 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, 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 evidence presented; and

WHEREAS, the matter was set for public hearing on JAN 10 2012, 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 NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings, as more fully explained in the Findings for Planned Development Permit No. 609801 and Site Development Permit No. 896755 for the Otay-Tijuana Cross Border Facility Project, on file in the Office of the City Clerk as Document No. RR-307237, with respect to PDP No. 609801 and SDP No. 896755:

A. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0604

1. The 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.
3. The proposed development will comply with regulations of the Land Development Code.
4. The proposed development, when considered as a whole, will be beneficial to the community.
5. Any proposed deviations pursuant to 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.

B. SITE DEVELOPMENT PERMIT – SDMC SECTION 126.0504(a):

1. **Findings for all Site Development Permits – SDMC section 126.0504(a):**
 - a. 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.
 - c. The proposed development will comply with the applicable regulations of the Land Development Code.
2. **Supplemental Findings – Environmentally Sensitive Lands – SDMC Section 126.0504(b):**
 - a. 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.
 - b. 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.
 - c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

f. 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.

2. The proposed use and project design meet the purpose and intent of the Otay Mesa Development District and the Otay Mesa Community Plan.

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.

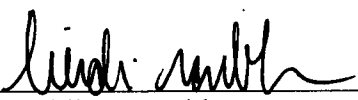
4. The proposed use will comply with the relevant regulations in the Municipal Code.

5. A plan for the financing of public facilities as provided in Section 1517.0204 (Financing of Public Facilities) of the Otay Mesa Development District has been approved by the City Engineer.

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

BE IT FURTHER RESOLVED, that Planned Development Permit No. 609801 and Site Development Permit No. 896755 are granted to OTAY-TIJUANA VENTURE, LLC, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JAN I. GOLDSMITH, City Attorney

By  _____
Heidi K. Vonblum
Deputy City Attorney

HKV:hm
12/16/2011
01/11/2012.REV
Or.Dept:DSD
Document No. 302434

FINDINGS FOR PLANNED DEVELOPMENT PERMIT NO. 609801 AND SITE
DEVELOPMENT PERMIT NO. 896755 FOR THE OTAY-TIJUANA CROSS BORDER
FACILITY PROJECT

ADOPTED BY RESOLUTION NO. R- 307237
ON JAN 10 2012

**A. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE
(SDMC) SECTION 126.0604**

1. **The development will not adversely affect the applicable land use plan.** The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone, the Otay Mesa Community Plan.

The project is proposed on a 63.8-acre graded, level site located immediately adjacent to the U.S.-Mexico International border in San Diego County, California. The property is approximately 3.2 miles east of the San Ysidro Port of Entry (POE) and 2.1 miles west of the Otay Mesa POE. The Tijuana Airport (TIJ) passenger terminal lies in Mexico, approximately 500 feet south of the project site. The project is a re-subdivision of an approximately 63.8-acre property currently zoned Industrial Subdistrict through the filing of a Vesting Tentative Map and request for a Community Plan Amendment (CPA) and Planned Development Permit (PDP) to allow the development of a 95,000 square foot (SF) Cross Border Facility (CBF), a 772,000 SF parking structure, and up to 706,000 SF of industrial office/warehouse uses.

A Community Plan Amendment (CPA) is part of the project. The CPA designates the entire site Institutional and describes the types of uses permitted within the Institutional land use designation at this site. Those uses are consistent with those proposed by the project. Additionally, the PDP includes conditions to implement the urban design policies of the General Plan. The following describes the project and provides additional analysis demonstrating that the project does not adversely affect the community plan.

The CBF is a processing facility that would facilitate border crossings for airline passengers using TIJ for flights in and out of the region as an alternative to their using the congested land ports-of-entry that occur along this portion of the International border.

As an alternative to the industrial office/warehouse uses, the PDP will allow the development of hotel uses with a maximum of 340 rooms and up to 40,000 SF of visitor-serving commercial uses on certain portions of the site and up to 402,000 SF of industrial office/warehouse uses on the balance of the site.

The proposed CPA would also add the three on-site roads to the Circulation Map of the Community Plan: Otay Pacific Drive from a local street to a four-lane major, Otay Pacific Place from an industrial collector to a four-lane collector, and Las Californias Drive from an industrial collector to a two-lane collector with a two way left turn lane. Three other segments would be

reclassified: Britannia Boulevard from SR-905 to Airway Road from a four-lane major to a six-lane primary arterial, Britannia Boulevard from Airway Road to Siempre Viva Road from a four-lane major to a six-lane major, and Otay Mesa Road from Piper Ranch Road to SR-125 from a four-lane primary arterial to a six-lane major arterial. The CPA would be implemented through approval of the PDP. The project also proposes the vacation of the public right-of-way for the portions of Otay Pacific Drive and Las Californias Drive that are south of Otay Pacific Place to accommodate the proposed development.

The CBF will implement the goals of the General Plan in addition to the overall Community Plan goals adopted by the City of San Diego in 1981 and updated in 1993. Specifically, the project is consistent with the following Community Plan Goals:

- To coordinate efforts of the City, County, State, Federal Governments and Mexico in providing for orderly development of Otay Mesa.
- To foster a “good neighbor” policy with Mexico and promote commercial and industrial inter-cooperation.
- To establish a reference for the future use of customs and immigration authorities and to facilitate international commerce

In addition, the project supports the General Industrial Objectives of the Community Plan, including:

- To alleviate high unemployment in the border area through the development of large industrial parks.
- To provide for a future “Foreign Trade Zone” supportive of the industrial parks

The Public Facilities, Services and Safety Element provides direction for the timely provision of public facilities and services for both the existing population and new growth. The project EIR fully addresses and identifies the demand for public facilities and services generated by the proposed project and outlines specific transportation and utilities/services improvements which are related to and in rough proportionality with the project impacts. Implementation of the improvements by the project would assure that current levels of service associated with those public facilities and services are maintained consistent with Policy PF-C.1. However, some of the identified impacts are deemed infeasible, and if not provided, would result in deficiencies of public facilities and services.

Certain transportation impacts would be mitigated consistent with Policy PF-C.1, while others would be infeasible to mitigate as discussed in the project Findings. The project will provide offsite traffic improvements at several locations in the vicinity of the project on Siempre Viva Road, Britannia Boulevard, Otay Mesa Road, Heritage Road and at the intersections of Otay Mesa Road/Britannia Boulevard and La Media Road and Airway Road in order to implement the goals of the Community Plan. For those specific locations where transportation mitigation measures are deemed infeasible and would not be provided within a reasonable time period, current levels of service may not be maintained or improved and the Public Facilities Financing

Plan would not be updated to reflect that with this project. However, the PFFP will be updated with the community plan update in the next year, which will include the CBF land use and associated impacts. The applicant has agreed and is conditioned to pay the FBA fees based on the updated PFFP, thus paying fees commensurate with the update that all Otay Mesa property owners will be subject to for development purposes, thus not adversely affecting the overall goals and objectives of the General Plan.

The Planned Development Permit includes design guidelines to ensure consistency with the City Council adopted (2008), General Plan's Urban Design Element. These provisions include:

- Design and retrofit streets to improve walkability, bicycling, and transit integration; to strengthen connectivity; and to enhance community identity.
- Provide landscape materials and design that compliment structures, create and define public and private spaces, provide shade, aesthetic appeal, and environmental benefits.
- Create street frontages with architectural and landscape interest to provide visual appeal to the streetscape that enhance the pedestrian experience.
- Design buildings that contribute to a positive neighborhood character and relate to neighborhood and community context.
- Provide expanded opportunities for local access and address the circulation needs of pedestrians within and among office and business park developments.
- A 30-foot distance separation is required provided between hotels and industrial structures to minimize hotel visitors' exposure to noise and air quality effects associated with industrial operations.

The proposed project helps implement many of the goals and objectives of the General Plan. It would provide for development of the site with two or more land uses in an integrated, compatible, and comprehensively planned manner consistent with GP Land Use policy LU-B.3. The proposed project would allow the site to be developed with industrial and commercial uses in conjunction with a CBF. While the proposed project is not specifically a transportation project, it would provide improved accessibility and more mobility choices for passengers accessing the TIJ Airport, and could help to reduce congestion at the existing POE's, thus implementing policies within the Mobility Element for modal choices and accessibility. The provision of a variety of uses that encourages activity and the presence of users throughout the day along with a public plaza and continuous landscaping help to implement urban design goals and objectives for crime prevention and using landscaping as an aesthetic element for development. The provision of new industrial and commercial uses as economic and employment generators, as well as an efficient passenger transportation system help to implement goals and policies within the Economic Prosperity Element. The limited provision of facilities and services does not fully mitigate impacts, thus not fully implementing the policies of the Public Facilities, Services, and Safety Element. Due to the competing nature of some of the General Plan goals and policies, the proposed project would substantially implement major

General Plan goals and policies. Therefore, the project 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 construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

The project has been designed in compliance with the Land Development Code to prevent detrimental impacts to the health, safety and welfare of residents, workers and visitors as well as adjacent development. These requirements include the design of streets, sidewalks, grading, and treatment of stormwater. Conditions of approval and mitigation measures address construction activities, shielding of lights, attenuation for noise, and placement of landscape and buildings. Construction of the project will be pursuant to the applicable Uniform Building, Fire, Plumbing, Electrical and Mechanical Codes. All Land Development Codes governing construction and continued operation of the development will apply to prevent the potential for future adverse impacts once buildout has occurred.

The proposed land uses and density of development for the project are compatible with the existing and future development patterns for Otay Mesa, which is largely Industrial and in support of border-related economic opportunities. The CBF and related parking structure will occupy approximately one-third of the overall site, while the balance of the site will develop as Industrial or Industrial office/warehouse with a limited combination of Hotel, and Visitor Serving Commercial uses.

The environmental analysis for the project confirms that it would not have the potential to cause significant adverse effects to Health and Safety, Hydrology/Water Quality, or Public Services. As concluded in the CEQA analysis, there are adequate Police and Fire services to accommodate the project.

Environmental Impact Report No. 169653 (EIR) was prepared for the project in accordance with the California Environmentally Quality Act (CEQA). Significant unmitigable impacts would occur in the following areas: Transportation/Circulation and Air Quality. Traffic mitigation, including adding traffic signals, widening or restriping road segments, adding travel lanes and turn and through lanes, is required for project implementation. The project would construct on-site roadway improvements in addition to off-site traffic improvements within four roadway segments due to secondary impacts to environmentally sensitive lands. The applicant has prepared a draft Statement of Overriding Considerations and Findings for consideration to address the Transportation/Circulation unmitigable impacts.

Concerning Air Quality, direct and cumulative impacts would occur with project implementation. The proposed intensification of uses on the site (as compared with the current allowable industrial land uses under the existing conditions) would not be consistent with SANDAG population or emissions projections due to the ADT resulting from the project. The project divert traffic from the two existing Ports of Entry, thereby reducing idling time and

related vehicle emissions at the international border. The CBF is the primary source of emissions accessing the site. There is no public transit planned for the project area that would reduce the number of vehicles drawn to the site. Although energy efficiency measures must be demonstrated during building permit issuance, significant impacts to regional air quality remain unavoidable. The applicant has prepared draft Statement of Overriding Considerations and Findings for consideration to address the Air Quality unmitigable impacts.

The EIR concluded that the proposed project could have a significant environmental effect in the following areas: Noise and Paleontological Resources, and Biological Resources. However, implementation of a Mitigation Monitoring and Reporting Program would reduce the environmental effects of the project in these issue areas to below a level of significance in these issue areas. No significant impacts result from for the following issue areas: Land Use, Greenhouse Gas Emissions, Energy, Public Utilities and Visual Quality/Neighborhood Character. Therefore, the development will not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with regulations of the Land Development Code. The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

The development of the CBF would comply with all of the applicable regulations of the underlying zone with the exception of setback and lot frontage. Two minor deviations have been incorporated into the project design for a reduction to the rear setback for the pedestrian bridge, and to allow for no frontage on a dedicated public right-of-way for lots 7, 8, 10 and 11 where 100 feet is required. Instead of providing public street frontage for Lots 7, 8, 10 and 11, private access will be provided to these lots either through reciprocal access easements from adjacent lots with adequate public street frontage, or from the private drive that serves the Cross Border Facility site. Vehicular ingress and egress will provide appropriate access controls to the CBF, such as the one way configuration with a center island to delineate the public passenger drop off area from the bus, van, shuttle island to the left side, resulting in less than standard vertical curves.

The requested deviations are minor in scope. The street frontages for Lots 7, 8, 10 and 11 are less than required by the SDMC because the public street which helped to satisfy the frontage requirements is proposed to be converted to a private driveway. These considerations could not be addressed by constructing the roadway in strict accordance with the City’s Street Design Manual without extensive deviations from street standards. Nevertheless, the private driveway is designed for safe public travel. As a private driveway, the use of roadway is controlled by the Permittee, which is warranted for a facility of the development’s type. The maintenance of the driveway and any liability arising from its operation are obligations of the Permittee.

The elevated pedestrian bridge would connect the CBF building on the U.S. side of the border directly to the terminal building at the TIJ Airport. It would encroach into the rear yard setback by necessity to cross the rear property line.

The proposed CBF and parking structure have been reviewed against all of the applicable use and development regulations within the Land Development Code including the development and use regulations in Chapter 13; the separately regulated use requirements, general requirements, and supplemental development regulations in Chapter 14, as well as the requirements of the Otay Mesa Planned District Ordinance. Therefore, the development will comply with the relevant regulations of the Land Development Code.

4. The proposed development, when considered as a whole, will be beneficial to the community. The project proposes to construct a Cross Border Facility, industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone, Otay Mesa Community Plan. The primary purpose, goals and objectives of the proposed project are to:

- Provide a more convenient, cost effective, reliable, and more secure crossing of the U.S. - Mexico International border to access flights originating from and destined for the TIJ Airport;
- Facilitate cross border movement of ticketed air travelers using TIJ Airport to minimize economic losses to the San Diego-Tijuana region caused by long and unpredictable border waits and congestion;
- Develop facilities that would maintain and not compromise the security and integrity of the existing border or impede the operations at the TIJ Airport;
- Develop a project to serve the Otay Mesa community and San Diego region that is consistent with the goals of the Community Plan, Multiple Species Conservation Plan, General Plan and Regional Comprehensive Plan;
- Implement and allow for a mix of uses that would serve the airline passengers crossing the border and the local community while maximizing sources of revenue for the City through sales tax, property tax, development fees, and transit occupancy tax (TOT).

The project serves a regional need for increased capacity to facilitate secure travel and trade across the U.S./Mexico border. SANDAG estimates economic losses of \$3 billion and 35,000 jobs annually in the region due to border crossing delays. Congestion and unpredictable wait times at the existing vehicle and pedestrian border crossings in San Ysidro and Otay Mesa negatively impact tourism, travel and trade in San Diego.

More than 2 million passengers per year utilize the existing border crossings in conjunction with travel to/from TIJ. Facilitating safe, secure, direct and convenient crossing at the CBF will alleviate demand at the existing crossings. In addition, the community benefits from access to lower cost travel options and service to destinations not offered in the region, including air service to Japan and China which further facilitates international trade to benefit the region's economy. Therefore, the proposed development as a whole will be beneficial to the community.

5. Any proposed deviations pursuant to 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.

The project proposes to construct a Cross Border Facility, industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone, Otay Mesa Community Plan. Two deviations are proposed for a rear yard encroachment and to lot frontage.

The elevated pedestrian bridge would connect the CBF building on the U.S. side of the border directly to the terminal building at the TIJ Airport. It would encroach into the rear yard setback by necessity to cross the rear property line. A second deviation has been incorporated into the project to allow a deviation to the requirement that certain lots front on a dedicated public right-of-way. The requested deviations are minor in scope, and consistent with the Otay Mesa Planned Development Ordinance. The street frontages for Lots 7, 8, 10 and 11 are less than otherwise required by the SDMC because the public street which helped to satisfy the frontage requirements is proposed to be converted to a private driveway. These considerations could not be addressed by constructing the roadway in strict accordance with the City's Street Design Manual without extensive deviations from street standards. Nevertheless, the private driveway is designed for safe public travel.

As a private driveway, the use of roadway is controlled by the Permittee, which is warranted for a facility of the development's type. The maintenance of the driveway and any liability arising from its operation are obligations of the Permittee. The deviations meet the goals and objectives of the applicable land use regulations by providing for public safety, avoiding excessive public maintenance costs, and minimizing public liability. The development complies with all other land development requirements.

Therefore, the proposed deviations pursuant to 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.

B. SITE DEVELOPMENT PERMIT – SDMC SECTION 126.0504(a):

1. Findings for all Site Development Permits – SDMC section 126.0504(a):

ONSITE USES

a. The proposed development will not adversely affect the applicable land use plan.

The project proposes to construct a U.S. Customs and Immigration processing facility ("cross border facility"), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone, Otay Mesa Community Plan. The

project includes a Site Development Permit as the proposed project includes an option to develop hotel use per the Otay Mesa Planned District Ordinance (Section 1517.0202(b)(4)).

The proposal to allow hotel use as an optional use will not adversely affect the Otay Mesa Community Plan. The Otay Mesa Community Plan is being amended to identify the entire project site as institutional. The Community Plan Amendment (CPA) specifically calls out hotel use as a permitted use. If hotel use is not developed, the sites identified for optional hotel use would be developed with industrial use which is also identified as a permitted use in the CPA. The option for 340 hotel rooms within the institutional land use designation is consistent with the land use designation of the plan as proposed to be amended.

The Project includes an Amendment to the Otay Mesa Community Plan, Vesting Tentative Map, Planned Development Permit, Site Development Permits, and Street Vacation. The zoning and PDP conditions of approval for the Project will ensure quality site and architectural design and must be adhered to for Project buildout.

Development intensities call for a maximum of 95,000 SF of CBF, a 772,000 SF parking structure, and up to 706,000 SF of industrial office/warehouse uses. As an alternative to developing all but the CBF lots with industrial uses, the PDP will allow the development of hotel sites adjacent to the CBF to accommodate a maximum of 340 rooms and associated conference and food service activities; up to 40,000 SF of visitor-serving specialty retail uses. All the other uses including the hotels, commercial, and industrial uses, would be constructed in compliance with the requirements of Chapter 14, Article 2, Division 5, of the City's LDC.

It is anticipated that the proposed project would be built out in phases, with the construction of the CBF and associated parking occurring first, and the construction of the hotel sites, commercial uses, and industrial uses occurring over time. The anticipated hotel and retail land uses are intended to support the users of the CBF in their travels along with providing needed hotel and retail services to the Otay Mesa community. Additional conditions of approval include mitigation for traffic, air quality, noise, paleontological and biological impacts to the extent feasible.

The proposed CPA includes a general industrial objective to provide areas for the exclusive use of industry prohibiting residential, commercial and other activities, except that a limited number of industry supportive commercial uses may be developed. The optional hotel use would be highly supportive of the proposed Otay-Tijuana Airport Cross Border Facility and surrounding industrial development. Visitor accommodations and accessory food service and conference facilities would support those crossing the border for airline flights and business travelers working with the industrial operations in Otay Mesa. See Finding A.1 for additional information. 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 to construct a Cross Border Facility, industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone, Otay Mesa Community Plan.

The project includes a Site Development Permit as the proposed project includes an option to develop hotel use per the Otay Mesa Planned District Ordinance (Section 1517.0202(b)(4) for impacts to environmentally sensitive lands.

The optional hotel use, if developed will be subject to the applicable use and development regulations within the Land Development Code for the CV-1-1 zone in Chapter 13; the separately regulated use requirements, general requirements, and supplemental development regulations in Chapter 14, as well as the requirements of the Otay Mesa Planned District Ordinance and the applicable building codes. Compliance with all of these will ensure there are no detrimental impacts to the health, safety and welfare of residents, workers and visitors.

Any hotel use constructed would be a maximum of four stories in height, would not exceed 60 feet in height above grade (in accordance with the CV-1-1 zone) and would feature exterior usable areas such as patios, recreation facilities and/or pools and surface parking lots. Where a hotel would be sited adjacent to industrial building(s), a 30-foot distance separation would be provided between the structures to avoid potential land use conflicts related to noise and general industrial activities.

The environmental analysis for the project concluded that a hotel use would not have the potential to cause significant adverse effects to Health and Safety, Hydrology/Water Quality, or Public Services. As concluded in the environmental analysis, there are adequate Police and Fire services to accommodate the project. 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 project proposes to construct a Cross Border Facility, industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

The project includes a Site Development Permit as the proposed project includes an option to develop hotel use per the Otay Mesa Planned District Ordinance for impacts to environmentally sensitive lands.

The optional hotel use will comply with the regulations of the Land Development Code. The hotel is an optional element of the larger project which includes a Vesting Tentative Map, Planned Development Permit, Site Development Permit, and Street Vacation in compliance with the regulations of the Land Development Code. The hotel uses would accommodate a maximum of 340 hotel rooms and associated food service and conference facilities to serve users of the CBF and provide much needed lodging and conference space for the Otay Mesa area.

If the hotel use is developed, it will be reviewed against all relevant regulations within the Land Development Code including the development and use regulations in Chapter 13; the separately regulated use requirements, general requirements, and supplemental development regulations in

Chapter 14, as well as the requirements of the Otay Mesa Planned District Ordinance. Issues related to intensity of development and traffic have been reviewed and the PDP has conditions that require hotel uses to comply with the use and development regulations of the Commercial Visitor zone (CV-1-1). See Finding A.3 for additional information. Therefore, the proposed development will comply with the applicable regulations of the Land Development Code.

OFF-SITE TRAFFIC MITIGATION

a. **The proposed development will not adversely affect the applicable land use plan.** The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

The proposed CPA would also add the three on-site roads to the Circulation Map of the Community Plan: Otay Pacific Drive from a local street to a four-lane major, Otay Pacific Place from an industrial collector to a four-lane collector, and Las Californias Drive from an industrial collector to a two-lane collector with a two way left turn lane. Three other segments would be reclassified: Britannia Boulevard from SR-905 to Airway Road from a four-lane major to a six-lane primary arterial, Britannia Boulevard from Airway Road to Siempre Viva Road from a four-lane major to a six-lane major, and Otay Mesa Road from Piper Ranch Road to SR-125 from a four-lane primary arterial to a six-lane major arterial. The CPA would be implemented through approval of the PDP. The project also proposes the vacation of the public right-of-way for the portions of Otay Pacific Drive and Las Californias Drive that are south of Otay Pacific Place to accommodate the proposed development.

A Site Development Permit is required to permit encroachment into Environmentally Sensitive Land (ESL) adjacent to off-site roads where improvements are required to mitigate for Project traffic impacts (described below).

- Traffic-3 (Siempre Viva Road between Otay Pacific Drive and Britannia Boulevard) - Widen the roadway to an interim four-lane major with raised median west of Otay Pacific Drive to the western project boundary, and restripe the roadway to a four-lane major from the western project boundary to Britannia Boulevard (This would require widening on the north side of Siempre Viva Road from Otay Pacific Drive westerly to provide for an interim four-lane major). This improvement would encompass a total impact area of 0.94 acre, all of which is ESL.
- Traffic-12 (Siempre Viva Road between Otay Pacific Drive and Las Californias Drive) - Widen/restripe the roadway between Otay Pacific Drive and Las Californias Drive from a two-lane collector to a four-lane collector without a center lane. This improvement would encompass a total impact area of 0.48 acre, all of which is ESL.
- Traffic-6/23 (Britannia Boulevard between Airway Road and Siempre Viva Road) - Widen on both sides to a six-lane major arterial. This improvement would

encompass a total impact area of 3.75 acres, including approximately 0.38 acre of ESL.

- Traffic-17 (Otay Mesa Road between SR-905 southbound ramp and La Media Road) - Widen the southern side of the segment from a five-lane major to a six-lane major arterial (capacity 50,000 ADT). This improvement would encompass a total impact area of 2.2 acres, including approximately 0.89 acre of ESL.

Appropriate mitigation measures will be implemented for potential impacts to environmentally sensitive lands through either habitat preservation or payment into the City's Habitat Acquisition Fund or Marraon Valley Cornerstone Lands Mitigation Bank. An object of the Community Environmental and Design Element of the Otay Mesa Community Plan is to insure a healthful, safe environment that balances development with preservation of environmental elements and natural resources through several measures including the preservation of unique natural environments in accordance with relevant EIR mitigation measures. Based on the described conditions, the City finds that development of the off-site roadway improvement will be sited and designed to prevent adverse impacts on the applicable land use plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The project proposes to construct a U.S. Customs and Immigration processing facility ("cross border facility"), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

The off-site roadway improvement proposed are Tra-6/23 (Britannia Boulevard between Airway Road and Siempre Viva Road); Tra-12 (Siempre Viva Road between Otay Pacific Drive and Las Californias Drive); Tra-3 (Siempre Viva Road between Otay Pacific Drive and Britannia Boulevard); and Tra-17 (Otay Mesa Road between SR-905 southbound ramp and La Media Road).

The improvements will be designed in conformance with the City Land Development Code (LDC) and City Street Design Manual to ensure proper function and safety. Based on these criteria and potential constraints related to concerns such as right-of-way (ROW) acquisition needs, the proposed improvements encompass the minimum disturbance/ development area required to conform with applicable standards and avoid environmental impacts, including Environmentally Sensitive Lands (ESL) to the maximum extent feasible.

The roadway improvement is located in generally level areas of Otay Mesa, and therefore grading associated with these improvements will therefore not be extensive, and will be limited to the minimum amount necessary to implement the proposed improvements in conformance with the City Street Design Manual to ensure proper roadway function and safety. The proposed off-site improvements will also be subject to regulatory requirements for potential erosion, including the use of appropriate BMPs and revegetation efforts in conformance with Clean Water Act/National Pollutant Discharge Elimination System (CWA/NPDES) and related City Storm Water, LDC, and Landscape Manual standards.

The entire project site and vicinity, including the off-site roadway improvement areas, are located outside of mapped 100-year floodplains and other flood-prone areas, and would therefore not be subject to associated flood-related hazards. All proposed storm drain facilities associated with the off-site roadway improvements would be designed to accommodate a 50-year storm event (pursuant to applicable City of San Diego standards). Specifically, conformance with City standards will ensure adequate drainage control and capacity to prevent associated hazards such as flooding (e.g., from undersized drainage facilities), undermining of roadway or other improvements, and erosion.

The project is not located within any areas susceptible to brush fires. This conclusion is based on the previously graded, filled and partially developed nature of the project areas, as well as the fact that most surrounding areas in the Otay Mesa region have been previously disturbed and/or developed through activities such as agriculture and industrial/institutional uses. Accordingly, the off-site roadway improvements are located in areas where native habitats have been largely replaced by graded or developed terrain, with a corresponding reduction in potential wildfire hazards (i.e., due to the lack of associated fuel bases such as brush or woodland habitats).

While the identified impacts to ESL cannot be avoided due to the locations of the required improvements relative to existing roads and ESL, as well as the noted design standard requirements/constraints, measures are identified in the project Final Environmental Impact Report (FEIR) to limit ESL impacts to the maximum extent feasible and mitigate those impacts that cannot be avoided. Specifically, mitigation of unavoidable impacts to sensitive habitat will be provided through either appropriate habitat preservation or payment into the City's Habitat Acquisition Fund or Marron Valley Cornerstone Lands Mitigation, with ESL impact minimization, as summarized below:

- Implementing mitigation for non-native grassland habitat impacts at the off-site mitigation areas through either habitat preservation at appropriate ratios (depending on whether or not the habitat is occupied by burrowing owl) and in appropriate areas (upon approval by the Wildlife Agencies), or making a City-approved payment into the City's Habitat Acquisition Fund or Marron Valley Cornerstone Lands Mitigation Bank;
- Obtaining approved Wildlife Agency permits and implementing associated habitat creation, restoration, and/or purchase of mitigation credits in an approved bank, and at appropriate ratios, for direct impacts to freshwater marsh, southern willow scrub and disturbed wetland habitats.
- Delineating the entire limits of grading at all four off-site mitigation areas with orange construction fencing (or other appropriate barrier) under the supervision of a qualified biologist to preclude entry into adjacent sensitive habitats.

The proposed off-site roadway improvements are located approximately 8.5 to 10 miles inland and outside of the Coastal Zone, and implementation of the proposed off-site roadway improvement would not be expected to result in any direct effects related to beach erosion or coastal sand supplies. The project site and off-site roadway improvement will be subject to appropriate construction and post-construction erosion avoidance/control measures.

Environmental review of the Project concluded that it would not have the potential to cause significant adverse effects to Health and Safety, Hydrology/Water Quality, or Public Services. As concluded in the CEQA analysis, there are adequate Police and Fire services to accommodate the Project.

The Project and off-site roadway improvement have been designed in compliance with the Land Development Code to prevent detrimental impacts to the health, safety and welfare of residents, workers and visitors as well as adjacent development and people. Based on the described conditions, the off-site roadway improvement mitigation measures will not be detrimental to the public health, safety, and welfare.

c. The proposed development will comply with regulations of the Land Development Code. The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan. A Site Development Permit is required to permit encroachment into Environmentally Sensitive Land (ESL) adjacent to off-site roads where improvements are required to mitigate for project traffic impacts at the following four locations: Traffic-3 (Siempre Viva Road between Otay Pacific Drive and Britannia Boulevard); Traffic-12 (Siempre Viva Road between Otay Pacific Drive and Las Californias Drive); Traffic-6/23 (Britannia Boulevard between Airway Road and Siempre Viva Road); and, Traffic-17 (Otay Mesa Road between SR-905 southbound ramp and La Media Road).

These off-site roadway improvements will be designed in conformance with the City Land Development Code (LDC) and City Street Design Manual to ensure proper function and safety. Appropriate mitigation measures as outlined in the Biology Guidelines (adopted as part of the Land Development Code), are required for project implementation. While the identified impacts to ESL cannot be avoided due to the locations of the required improvements relative to existing roads and ESL, as well as the noted design standard requirements/constraints, measures are identified in the project Final Environmental Impact Report (FEIR) to limit ESL impacts to the maximum extent feasible and mitigate those impacts that cannot be avoided. Specifically, mitigation of unavoidable impacts to sensitive habitat will be provided through either appropriate habitat preservation or payment into the City’s Habitat Acquisition Fund or Marron Valley Cornerstone Lands Mitigation. Therefore, the proposed development will comply with the Land Development Code.

2. Supplemental Findings – Environmentally Sensitive Lands – SDMC Section 126.0504(b):

a. The proposed development and the development will result in minimum disturbance to environmentally sensitive lands. The project site is generally level and has been previously graded, filled and partially developed under prior approvals issued by the City. As a result, proposed disturbance/development within the project site will not result in any impacts to City of San Diego Environmentally Sensitive Lands (ESL). Based on identified project-related transportation/circulation impacts, however, impacts to ESL consisting of sensitive biological habitats would occur in association with four off-site roadway improvements

required as project mitigation measures. Specifically, this will include improvements along applicable segments of three Circulation Element roads (Siempre Viva Road, Britannia Boulevard, and Otay Mesa Road), with the identified mitigation measures and related impacts outlined below:

- Tra-3 (Siempre Viva Road between Otay Pacific Drive and Britannia Boulevard) - Widen the roadway to an interim four-lane major with raised median west of Otay Pacific Drive to the western project boundary, and restripe the roadway to a four-lane major from the western project boundary to Britannia Boulevard (This would require widening on the north side of Siempre Viva Road from Otay Pacific Drive westerly to provide for an interim four-lane major). This improvement would encompass a total impact area of 0.94 acre, all of which is ESL.
- Tra-12 (Siempre Viva Road between Otay Pacific Drive and Las Californias Drive) - Widen/restripe the roadway between Otay Pacific Drive and Las Californias Drive from a two-lane collector to a four-lane collector without a center lane. This improvement would encompass a total impact area of 0.48 acre, all of which is ESL.
- Tra-6/23 (Britannia Boulevard between Airway Road and Siempre Viva Road) - Widen on both sides to a six-lane major arterial. This improvement would encompass a total impact area of 3.75 acres, including approximately 0.38 acre of ESL.
- Tra-17 (Otay Mesa Road between SR-905 southbound ramp and La Media Road) - Widen the southern side of the segment from a five-lane major to a six-lane major arterial (capacity 50,000 ADT). This improvement would encompass a total impact area of 2.2 acres, including approximately 0.89 acre of ESL.

The described roadway improvements required as project mitigation will be designed in conformance with the City Land Development Code (LDC) and Street Design Manual to ensure proper function and safety. Based on these criteria and potential constraints related to concerns such as right-of-way (ROW) acquisition needs, the proposed improvements encompass the minimum disturbance/development area required to conform to applicable standards and avoid environmental impacts (including ESL) to the maximum extent feasible. While the identified impacts to ESL cannot be avoided due to the locations of the required improvements relative to existing roads and ESL, as well as the noted design standard requirements/constraints, measures are identified in the project Final Environmental Impact Report (FEIR) to limit ESL impacts to the maximum extent feasible and mitigate those impacts that cannot be avoided. Specifically, mitigation of unavoidable impacts to sensitive habitat will be provided through either appropriate habitat preservation or payment into the City's Habitat Acquisition Fund or Marron Valley Cornerstone Lands Mitigation Bank (as outlined in FEIR mitigation measures Bio-4 and Bio-6), with ESL impact minimization/avoidance to be ensured through FEIR mitigation measure Bio-7, which states:

Prior to issuance of grading permits for proposed off-site roadway improvements adjacent to sensitive habitat, the entire limits of grading shall be delineated with orange

construction fencing (or other appropriate barrier) under the supervision of a qualified biologist to preclude entry into adjacent sensitive habitats. The need to install fencing shall be noted on the project construction drawings.

Based on the above discussion, the development of the project site and associated off-site roadway improvement mitigation measures will avoid/minimize disturbance to ESL to the maximum extent feasible.

b. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

Environmentally Sensitive Lands Avoidance, Impacts and Mitigation

The project site is generally level and has been previously graded, filled and partially developed under prior approvals issued by the City. As a result, proposed disturbance/development within the project site will not result in any impacts to City of San Diego Environmentally Sensitive Lands (ESL). Based on identified project-related transportation/circulation impacts, however, impacts to ESL consisting of sensitive biological habitats would occur in association with four off-site roadway improvements required as project mitigation measures. Specifically, this will include improvements along applicable segments of three Circulation Element roads (Siempre Viva Road, Britannia Boulevard, and Otay Mesa Road), with the identified mitigation measures and related impacts outlined below.

Landform Alteration and Geologic/Erosional Hazards

The off-site roadway improvements listed above in Item 2.a are located in generally level areas of Otay Mesa, and encompass similar surface and subsurface geologic/soil conditions as the project site as stated in Section 7.2 of the FEIR. Grading associated with these improvements will therefore not be extensive, and will be limited to the minimum amount necessary to implement the proposed improvements in conformance with the City Street Design Manual to ensure proper roadway function and safety. The proposed off-site improvements will also be subject to similar regulatory requirements for potential erosion hazards as noted for the project site, including the use of appropriate BMPs and revegetation efforts in conformance with Clean Water Act/National Pollutant Discharge Elimination System (CWA/NPDES) and related City Storm Water, LDC, and Landscape Manual standards.

Flood/Fire Hazards

As described in Section 7.5 of the FEIR, the entire project site and vicinity, including the off-site roadway improvement areas, are located outside of mapped 100-year floodplains and other flood-prone areas, and would therefore not be subject to associated flood-related hazards. Section 7.5 of the DEIR also notes that all proposed storm drain facilities associated with the

project site would be designed to accommodate a 50-year storm event (pursuant to applicable City of San Diego standards), with these requirements to be implemented for the identified off-site roadway improvements as well. Specifically, conformance with City standards will ensure adequate drainage control and capacity to prevent associated hazards such as flooding (e.g., from undersized drainage facilities), undermining of roadway or other improvements, and erosion. Section 7.5 of the FEIR concludes that the project is not located within any areas susceptible to brush fires. This conclusion is based on the previously graded, filled and partially developed nature of the project areas, as well as the fact that most surrounding areas in the Otay Mesa region have been previously disturbed and/or developed through activities such as agriculture and industrial/institutional uses. Accordingly, the off-site roadway improvements are located in areas where native habitats have been largely replaced by graded or developed terrain, with a corresponding reduction in potential wildfire hazards (i.e., due to the lack of associated fuel bases such as brush or woodland habitats).

Based on the described conditions, the development of the project site and associated off-site roadway improvement mitigation measures 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.

c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

As described above under Item 2.a: (1) off-site roadway improvements required as project mitigation will be designed in conformance with the City LDC and Street Design Manual to ensure proper function and safety; (2) based on regulatory criteria and potential environmental/ROW constraints, the proposed off-site roadway improvements encompass the minimum disturbance/development area required to conform with applicable standards and avoid environmental impacts (including ESL) to the maximum extent feasible; and (3) the identified impacts to ESL from off-site improvements cannot be avoided due to the relative locations of the required improvements and ESL, as well as associated design standard requirements and constraints. However, measures are identified in the FEIR to avoid additional impacts to adjacent ESL (through the implementation of mitigation measure Bio-7).

Based on the described conditions, the City finds that development of the project site and associated off-site roadway improvements will be sited and designed to prevent adverse impacts on any adjacent ESL.

d. The proposed development will be consistent with the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan. The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay

Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan. The MSCP is a comprehensive biological habitat conservation planning program developed by the City and other local jurisdictions in coordination with state and federal resource agencies. A goal of the MSCP is to preserve a network of habitat and open space, thereby protecting biodiversity. Local jurisdictions, including the City, implement their portions of the MSCP through subarea plans, with the City's MSCP Subarea Plan guiding the establishment of the City's preserve system, the Multi-Habitat Planning Area (MHPA). The purpose of the related City ESL ordinance is to "protect, preserve and, where damaged restore, the environmentally sensitive lands of San Diego and the viability of the species supported by those lands."

As described in Section 5.9 of the FEIR, the four proposed off-site traffic mitigation impact areas (identified in item 2.a above) are subject to the provisions of the City's MSCP Subarea Plan, but are outside of and not adjacent to the MHPA. Therefore, the City's MHPA Land Use Adjacency Guidelines would not apply. Development of one of the off-site roadway improvement mitigation measures (Tra-17, refer to Item 2.a above) would result in indirect impacts to an MSCP-covered species (burrowing owl); however, implementation of all four off-site roadway improvement mitigation measures would impact ESL in the form of sensitive biological resources. The FEIR identifies a number of mitigation measures to address the direct and indirect impacts and provide for project consistency with the City's MSCP Subarea Plan. Specifically, as described in FEIR Section 5.9, these include measures to address identified impacts to burrowing owl and ESL, as summarized below.

- Mitigation Measures Bio-4 Through Bio-7: These measures are all directed at indirect impacts to burrowing owl and ESL from proposed development of the four off-site roadway improvement mitigation measures (i.e., Tra-3, Tra-12, Tra-6/23, and Tra-17). Specific requirements include: (1) implementing mitigation for non-native grassland habitat impacts at all four off-site mitigation areas through either habitat preservation at appropriate ratios (depending on whether or not the habitat is occupied by burrowing owl) and in appropriate areas (upon approval by the Wildlife Agencies), or making a City-approved payment into the City's Habitat Acquisition Fund or Marron Valley Cornerstone Lands Mitigation Bank; (2) conducting a pre-construction survey for burrowing owls within the proposed improvement area along Otay Mesa Road (Tra-17), pursuant to the scope and methodology described above under Mitigation Measures Bio-1 through Bio-3; (3) obtaining approved Wildlife Agency permits and implementing associated habitat creation, restoration, and/or purchase of mitigation credits in an approved bank, and at appropriate ratios, for direct impacts to freshwater marsh, southern willow scrub and disturbed wetland habitats (Tra-3); and (4) delineating the entire limits of grading at all four off-site mitigation areas with orange construction fencing (or other appropriate barrier) under the supervision of a qualified biologist to preclude entry into adjacent sensitive habitats.

Based on the described conditions and mitigation requirements, the development of the project site and associated off-site roadway improvements will be consistent with the City MSCP Subarea Plan.

e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

The proposed off-site roadway improvements are located approximately 8.5 to 10 miles inland and outside of the Coastal Zone. Based on these distances, project implementation (including the proposed off-site mitigation areas) would not be expected to result in any direct effects related to beach erosion or coastal sand supplies. All project-related development (including the project site and off-site mitigation areas) will be subject to appropriate construction and post-construction erosion avoidance/control measures (as discussed above under Item 2.b), with related indirect impacts to shoreline erosion or sand supplies therefore not anticipated.

Based on the described conditions, the development of the project site and associated off-site roadway improvement mitigation measures will not contribute to the erosion of public beaches or adversely impact local shoreline sand supplies.

f. 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 project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

As described above under Items 2.a, 2.c and 2.d, implementation of identified mitigation measures for biological resources (Bio-4 through Bio-7) would avoid or reduce all impacts to ESL and related sensitive resources (e.g., burrowing owl) from implementation of the off-site mitigation areas below a level of significance. All other conditions of the permit are also reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

Based on the described conditions, the 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 project proposes to construct a Cross Border Facility, industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

This Site Development Permit is required because the proposed project includes an option to develop hotel use and for deviations per the Otay Mesa Planned District Ordinance (Sections 1517.0202(b)(4) and 1517.0202(b)(3)).

The project application has been deemed complete. It has been reviewed and found to conform to all City Regulations, policies, guidelines, design standards and density including the General Plan, Multiple Species Conservation Plan, the Otay Mesa Community Plan (as proposed in the CPA as part of the Project), the Land Development Code, and the Otay Mesa Planned District Ordinance.

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 proposes to construct a Cross Border Facility, industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

The project includes a Site Development Permit as the proposed project includes an option to develop hotel use per the Otay Mesa Planned District Ordinance (Section 1517.0202(b)(4), and for deviations (Section 1517.0202(b)(3)).

The optional hotel uses meet the purpose and intent of the Otay Mesa Development District. In addition to promoting the development of the City's largest and potentially most significant industrial area, the project is intended to provide the necessary facilities and services to complement the Otay Mesa border crossing and provide commercial use types necessary to support both the industrial area and the border crossing. The hotel use would be highly supportive of the proposed San Diego-Tijuana Airport Cross Border Facility. Providing visitor accommodations and accessory food and conference facilities would be highly supportive of those crossing the border for airline flights and business travelers working with the industrial operations in Otay Mesa.

The optional hotel use is identified as a permitted use in the Otay Mesa Community Plan Amendment (CPA) that is being processed with this project. Additionally, it is currently identified as an allowable use in the draft Otay Mesa Community Plan Update and has been contemplated in the future development of the community infrastructure.

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 construct a U.S. Customs and Immigration processing facility ("cross border facility"), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan.

The project includes a Site Development Permit as the proposed project includes an option to develop hotel use and for deviations per the Otay Mesa Planned District Ordinance (Section 1517.0202(b)(4) and 1517.0202(b)(3)).

The optional hotel use, if developed will be subject to the applicable use and development regulations within the Land Development Code for the CV-1-1 zone in Chapter 13; the separately regulated use requirements, general requirements, and supplemental development regulations in Chapter 14, as well as the requirements of the Otay Mesa Planned District Ordinance and the applicable building codes. Compliance with all of these will insure there are no detrimental impacts to the health, safety and welfare of residents, workers and visitors.

A hotel constructed on site would be a maximum of four stories in height and would not exceed 60 feet in height above grade (in accordance with the CV-1-1 zone) and would feature exterior usable areas such as patios, recreation facilities and/or pools and surface parking lots. Where a hotel would be sited adjacent to industrial building(s), a 30-foot distance separation would be provided between the structures to avoid potential land use conflicts related to noise and general industrial activities.

The environmental analysis for the project confirms that it would not have the potential to cause significant adverse effects to Health and Safety, Hydrology/Water Quality, or Public Services. As concluded in the CEQA analysis, there are adequate Police and Fire services to accommodate the project.

4. The proposed use will comply with the relevant regulations in the Municipal Code. The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan. The project includes a Site Development Permit as the proposed project includes an option to develop hotel use and for deviations per the Otay Mesa Planned District Ordinance.

The currently proposed CBF and parking structure have been reviewed against all of the applicable use and development regulations within the Land Development Code including the development and use regulations in Chapter 13; the separately regulated use requirements, general requirements, and supplemental development regulations in Chapter 14, as well as the requirements of the Otay Mesa Planned District Ordinance. All future development proposals will be reviewed against the requirements of the Land Development Code, the approved map, permits and exhibits.

The proposed project is processing a Planned Development Permit as required for a deviation to rear yard setback. The project cannot fulfill its purpose without the proposed rear yard deviation. In order for the project to function as a cross border airport passenger terminal, it must cross the international border to connect with Rodriguez International Airport in Tijuana. The project proposes to make that connection via an above grade, completely enclosed pedestrian bridge. Out of necessity, the bridge will be located in (above) the rear yard setback.

Current air travelers using Rodriguez International Airport in Tijuana must travel into Mexico through the San Ysidro or Otay Mesa Ports of Entry. Travelling through these ports of entry most often involves increased ground travel times, border crossing wait times, unnecessary fuel consumption, and increased automotive exhaust emissions. Development of the project would provide safe, secure, and convenient access to air travelers using Rodriguez International Airport

and would greatly reduce negatives associated with accessing the airport via the existing ports of entry. Without this deviation the project cannot move forward and the negatives associated with using the existing ports of entry will continue.

5. A plan for the financing of public facilities as provided in Section 1517.0204 (Financing of Public Facilities) of the Otay Mesa Development District has been approved by the City Engineer. The project proposes to construct a U.S. Customs and Immigration processing facility (“cross border facility”), industrial office/warehouse uses, commercial uses, and hotel uses. The property is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border, in the Otay Mesa Development District, Industrial Subdistrict zone of the Otay Mesa Community Plan. The project requires a Site Development Permit for freeway off-site roadway improvements identified as mitigation for project-related impacts, for a proposed optional hotel use, and for deviations to the development regulations. The plan for financing of public facilities of the Otay Mesa Development District is the Otay Mesa Public Facilities Financing Plan, which was approved by the City Engineer in 1993, and last updated in 2006.

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

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 23431907

**PLANNED DEVELOPMENT PERMIT NO. 609801
SITE DEVELOPMENT PERMIT NO. 896755.
OTAY –TIJUANA CROSS BORDER FACILITY DEVELOPMENT
PROJECT NO. 169653
CITY COUNCIL**

This Planned Development Permit No. 609801 and Site Development Permit No. 896755 is granted by the City Council of the City of San Diego to Otay-Tijuana Venture LLC, Owner and Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0604 and 126.0504. The 63.8-acre site is located east of Britannia Boulevard, south of Siempre Viva Road (at the cross-street of Otay Pacific Drive), and immediately adjacent to the U.S.-Mexico International border in the Otay Mesa Development District, Industrial Subdistrict zone, Otay Mesa Community Plan. The project site is legally described as Lots 1 through 30 of Otay Business Park Map No. 15548.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/ Permittee to resubdivide the 63.8-acre site for use as a U.S. Customs and Immigration processing facility (cross border facility), industrial office/warehouse uses, commercial uses, and hotel uses, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated **JAN 10 2012**, on file in the Development Services Department.

The project shall include:

- a. Development of a 95,000 square foot, U.S. Customs, Immigration Processing Facility and Cross Border Facility; a 772,000 square-foot parking structure; and, up to 706,000 square feet of industrial office/warehouse uses;
- b. As an alternative to development of the 706,000 square feet of industrial office/warehouse uses referenced in section "a": hotel uses with a maximum of 340 rooms; up to 40,000 square feet of visitor-serving commercial uses (including a 6,000 square-foot sit-down restaurant) and up to 402,000 square feet of industrial office/warehouse uses on any portions of the site except lots 8, 9, and 10 of the site;

- c. Off-site traffic mitigation required for roadway improvements including widening or the addition of travel lanes, at the following locations as identified in Environmental Impact Report No. 169653:
 - 1. Airway Road between SR-905 and La Media (Tra-3)
 - 2. Airway Road between La Media Road and Britannia Boulevard (Tra-6/21)
 - 3. La Media Road between SR-905 and Airway Road (Tra-17)
 - 4. La Media Road between Airway Road and Siempre Viva Road (Tra-21)

Deviations to the following development regulations: To observe a 0'-0" rear yard setback for the Cross Border Facility pedestrian bridge structure where 20'-0" is required on lot 8; and to provide 0'-0" of frontage on a dedicated street where 100' -0" is required for lots 7, 8, 10 and 11;

- d. Landscaping (planting, irrigation and landscape related improvements);
- e. Off-street parking;
- 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.

STANDARD REQUIREMENTS:

- 1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. 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. This permit must be utilized by JAN 10 2015.
- 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. This Permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved Exhibit "A."

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program prepared for EIR No. 169653 [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 Environmental Impact Report No. 169653 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 Environmental Impact Report No. 169653, 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: Transportation/Circulation, Noise, Paleontological Resources and Biological Resources. Where any conditions in this Permit conflict with the mitigation measures identified in the MMRP, the more stringent requirement(s) shall apply.
15. Prior to issuance of building permits for Lots 1, 2, 5, 6, 7, 8, 11, 12, 13, 19, 20, 23, 24, 25, 26, 29, and 30, an exterior-to-interior noise analysis shall be completed to assess off-site noise sources and determine if related interior noise standards are met for on-site commercial uses, assuming the land uses proposed in the CBF plus hotel, commercial and industrial development scenario. Appropriate noise planning and attenuation measures identified in the noise analysis shall be incorporated into the project design to ensure compliance with the General Plan Noise Element Land Use - Noise Compatibility Guidelines.

16. All ground-mounted HVAC systems shall utilize a noise control barrier surrounding the equipment; the top of the surrounding wall must be at least two feet higher than the tallest equipment in the enclosure. The barrier shall meet the criteria identified in mitigation Noi-1 of the EIR.
17. All rooftop-mounted HVAC systems shall utilize parapet walls surrounding the equipment; the top of the surrounding walls must be equal to the tallest piece of equipment.
18. Backup generators shall be enclosed in a standard type two noise control cabinet and protected by a noise control barrier at least two feet higher than the top of the generator. The barrier shall meet the criteria identified in mitigation Noi-3 of the EIR.

ENGINEERING REQUIREMENTS:

19. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond the construction of City standard curb ramps, at all street intersections and at project entrances, satisfactory to the City Engineer.
20. The drainage system for this project will be subject to approval by the City Engineer.
21. Prior to the issuance of any building permits, 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 City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
22. Prior to the issuance of any construction permit, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
23. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans or specifications.
24. Prior to the issuance of any construction permit, 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, consistent with the approved Water Quality Technical Report.
25. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99 08 and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CA S0108758), 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.

26. 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 Section C.7 of SWRCB Order No. 99 08 DWQ.

MULTIPLE SPECIES CONSERVATION PROGRAM:

27. The 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 (EAS) and any amendments thereto (16 U.S.C. Section 1531 et seq.).
28. In accordance with authorization granted to the City of San Diego from the USFWS pursuant to Sec. 10(a) of the ESA and by the CDFG pursuant to Fish & Game Code sec. 2835 as part of the Multiple Species Conservation Program (MSCP), the City of San Diego through the issuance of this Permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement (IA), executed on July 17, 1997 and on File in the Office of the City Clerk as Document No. 00-18394.
29. 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 Section 9.6 and 9.7 of the IA.
30. 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.

GEOLOGY REQUIREMENTS:

31. The Owner/Permittee shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter shall be reviewed for adequacy by the Geology Section of Development Services prior to the issuance of any construction permit.

32. The Owner/Permittee shall submit a geotechnical investigation report that specifically addresses any proposed structural storm water BMPs that involve active or passive infiltration or percolation. The geotechnical investigation report shall be prepared in accordance with the City's Guidelines for Geotechnical Reports, Appendix F. The geotechnical investigation report shall be reviewed for adequacy by the Geology Section of Development Services prior to the issuance of any construction permit.

FACILITIES FINANCING REQUIREMENTS:

33. Owner/Permittee shall be required to pay applicable Facilities Benefit Assessments (FBA), or other equivalent or similar impact fees at the time of building permit issuance. The FBAs or other equivalent or similar impact fees shall be calculated based upon the City Council adopted Otay Mesa Public Facilities Financing Plan in effect at the time of building permit issuance.
34. The Otay Mesa Community Plan is currently under review for an update. If the community plan is updated as anticipated, then the FBA land use categories and assessment structure are expected to change accordingly. It is anticipated that the new FBA assessment rates will be higher under the new community plan.
35. A Housing Trust Fund Fee (HTF) will apply to this project and is due at the time of building permit issuance. The HTF is calculated for each non-residential structure permitted on the site.

LANDSCAPING REQUIREMENTS:

36. Prior to the 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.
37. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way improvements shall be submitted to the 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.
38. 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).

39. In the event that a foundation only permit is requested by the Owner/Permittee, 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.'
40. Prior to issuance of any Certificate of Occupancy, Owner/Permittee shall 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.
41. 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.
42. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including 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.
43. 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 by Owner/Permittee in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department.

PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:

44. Prior to the issuance of any certificate of occupancy, the Owner/Permittee shall privatize segments of the existing sewer that fall under the proposed public right-of-way vacation of Otay Pacific Drive and Las Californias Drive as set forth in VTM/Public Right-of-Way Vacation No. 609579.

PLANNING/DESIGN REQUIREMENTS:

45. This Permit shall comply with the provisions of Vesting Tentative Map No. 609579.
46. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.
47. The Owner/Permittee shall post a copy of each approved discretionary Permit or Tentative Map for the Project in its sales office for consideration by each prospective buyer.

48. Access shall be provided through reciprocal access easements from adjacent lots for Lots 7, 8, 10, and 11.
49. All lots that develop within the subdivision, unless developed with retail sales or commercial services, shall do so according to the use and development regulations of the IH-2-1 zone of the Land Development Code except that business and professional office uses may also be permitted; and lots that develop with the commercial uses within the Retail Sales and Commercial Services uses categories shall be developed in accordance with the development regulations of the CV-1-1 zone of the Land Development Code.
50. Industrial development and business and professional office uses within the subdivision shall be limited to a floor area ratio of 0.5.
51. A maximum of 705,670 square feet of industrial development, including, business and professional office development, and a 12 vehicle fueling space automobile service station combined with a 1,200 square-foot mini-mart with car wash may be included on the project site.
52. Uses within the “Retail Sales” and “Commercial Services” categories of the Land Development Code may only be developed on Lots 1, 2, 19, 20, 29 and 30; hotel/visitor accommodations may only be developed on Lots 5, 6, 7, 11, 12, 13, 23, 24, 25, and 26.
53. Commercial development within the project site shall be limited to a floor area ratio of 0.3.
54. A maximum of 40,000 square feet of “Retail Sales” and “Commercial Services” uses, excluding visitor accommodations, may be developed within the subdivision. Of the 40,000 square feet, a maximum of 6,000 square feet may be developed with a sit-down restaurant.
55. Visitor accommodations may be developed to include a maximum of two (2) hotels with a combined maximum of 340 hotel rooms.
56. Lot 14 exists and shall remain developed as a detention basin.
57. A Cross Border Facility not to exceed 95,000 square-feet including a maximum 722,000 square-foot parking structure and surface parking spaces shall be developed on Lots 8, 9, and 10. The maximum ADT generated from the Cross Border Facility site (Lots 8, 9 and 10) shall not exceed 34,467 ADT.
58. For purposes of tracking development within the project, a minimum intensity equating to an FAR of 0.15 shall be assumed for each lot to assure that no lot is without development potential. Development shall not be required to achieve that minimum FAR of 0.15.

59. Each development within the project site shall demonstrate that it exceeds Title 24 requirements by fifteen percent (15%).
60. Prior to the issuance of any construction permits, the construction documents shall fully illustrate compliance with the Waste Management Plan.

DESIGN REQUIREMENTS:

61. The following design requirements shall be incorporated into all development proposed within the subdivision:

Architecture

1. Design buildings that contribute to a positive neighborhood character and relate to neighborhood and community context.
 - a. Provide architectural interest to discourage the appearance of blank walls. This includes not only building walls, but fencing bordering pedestrian networks, where some form of architectural variation should be provided to add interest to the streetscape and enhance the pedestrian experience. As an example, walls could protrude, recess, or change in color, height or texture to provide visual interest.
 - b. Design building wall planes to incorporate shadow relief, where pop-outs, offsetting planes, overhangs and recessed doorways are used to provide visual interest at the pedestrian level.
 - c. Design rear elevations of buildings to be as well-detailed and visually interesting as the front elevation, when they will be visible from a public right-of-way or accessible public place or street.
 - d. Incorporate architectural elements, materials, and details that provide a cohesive unifying design scheme throughout the project.
 - e. Design rooftops and the rear elevations of buildings to be as well detailed and visually interesting as the front elevation, if it will be visible from a public street.
 - f. Locate outdoor storage areas, refuse collection areas, and loading areas in interior rear or side yards and screen with a similar material and color as the primary building.
 - g. Maximize natural ventilation, sunlight, and views.
2. Create street frontages with architectural and landscape interest to provide visual appeal to the streetscape that enhance the pedestrian experience.

- a. Locate buildings on the site in a manner that reinforces street frontages.
- b. Relate buildings to existing and planned adjacent uses.
- c. Building entries shall be prominent, visible, and well-located.

Landscape

Landscape materials and design should compliment structures, create and define public and private spaces, provide shade, aesthetic appeal, and environmental benefits.

- a. Use landscape to provide a unifying scheme throughout the project.
- b. Maximize the planting of new trees, street trees and other plants for their shading, air quality, and livability benefits.
- c. Use landscape to support storm water management goals for filtration, percolation and erosion control.
- d. Shade paved areas, especially parking lots.
- e. Demarcate public, semi-public/private, and private spaces clearly through the use of landscape, walls, fences, gates, pavement treatment, signs, and other methods to denote boundaries and/or buffers.
- f. Use landscaped walkways to direct people to proper entrances and away from private areas.
- g. Reduce barriers to views or light by selecting appropriate tree types.

Streets

Design and retrofit streets to improve walkability, bicycling, and transit integration; to strengthen connectivity; and to enhance community identity.

Structured Parking

Use parking structures, rather than surface parking lots, to reduce land area devoted to parking.

- a. Design safe, functional, and aesthetically pleasing parking structures that minimize the visual impact of garages, parking, and parking portals to the pedestrian and street façades.
- b. Provide well-defined, dedicated pedestrian entrances.

- c. Design structures to be of a height and mass that are compatible with the surrounding area.
- d. Use building materials, architectural detailing, and landscape that complement the other development within the project.
- e. Use appropriate screening mechanisms to screen views of parked vehicles from pedestrian areas, and headlights from adjacent buildings.

Surface Parking

Reduce the amount and visual impact of surface parking lots and assure high-quality design in parking areas.

- a. Place parking along the rear and sides of street-oriented buildings.
- b. Avoid blank walls facing onto parking lots by promoting treatments that use colors, materials, landscape, selective openings or other means of creating interest. For example, the building should protrude, recess, or change in color, height or texture to reduce blank facades.
- c. Design clear and attractive pedestrian pathways and signs that link parking areas and destinations.
- d. Locate pedestrian pathways in areas where vehicular access is limited.
- e. Consider the use of pervious surface materials to reduce runoff and infiltrate storm water.
- f. Use trees and other landscape to provide shade, screening, and filtering of storm water runoff in parking lots.
- g. Use a combination of trees and shrubs at the edge of parking areas to screen parking lots and structures from the street.
- h. Design landscape to break-up large paved areas.

Lighting & Signs

- 1. Provide pedestrian-scaled lighting for pedestrian circulation and visibility.
- 2. Design project signage to effectively utilize sign area and complement the character of the structure and setting
 - a. Architecturally integrate signage into project design.

- b. Include pedestrian-oriented signs to acquaint users to various aspects of a development. Place signs to direct vehicular and pedestrian circulation.

Pedestrian-Oriented Design

Provide expanded opportunities for local access and address the circulation needs of pedestrians within and among office and business park developments.

- a. Design safe pedestrian routes between developments, preferably separated from vehicle traffic by incorporating convenient, safe, well-marked, and attractive pedestrian connections from the public street to building entrances.
- b. Design pedestrian routes to provide interest to the walker and promote their use. Interest can be created by paving materials, landscaping and/or public art.
- c. Identify pedestrian crossings of streets or parking lots through the use of special paving.

Siting of Hotel & Adjacent Industrial

A 30-foot distance separation shall be provided between hotels and industrial structures to minimize hotel visitors' exposure to noise and air quality effects associated with industrial operations. The distance separation may include areas devoted to parking, landscaping, open space, sidewalks, and street rights-of-way. Where the uses share a common property line, a buffer consisting of landscape and six-foot tall fencing, landscape material or equivalent shall be provided to screen industrial uses from the hotel.

TRANSPORTATION REQUIREMENTS:

Site Plan Conditions:

Parking:

- 62. For Phase 1, no fewer than 889 off-street automobile parking spaces (including 19 accessible and four van accessible spaces), 8 bicycle parking spaces with racks, and 28 motorcycle parking spaces shall be provided as shown on the project's Exhibit "A".

Parking:

- 63. For Phase 2/Cross Border Facility Buildout, no fewer than 2352 off-street automobile parking spaces (including 43 accessible and 10 van accessible parking spaces), 10 bicycle parking spaces with racks, and 61 motorcycle parking spaces shall be provided as shown on the project's Exhibit "A."

Parking:

64. All “non Cross Border Facility” development under this permit shall meet the minimum City parking requirements in effect at the time of development per the Land Development Code. No parking deviations are authorized under this permit.

Parking:

65. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Director.

On-site Signal Installation:

66. Prior to the issuance of any construction permit after Siempre Viva Road is extended to La Media, Owner/Permittee shall assure by permit and bond the installation of a traffic signal at the intersection of Las Californias Drive / Siempre Viva Road as warranted, satisfactory to the City Engineer.

On-site Signal Installation:

67. Prior to the issuance of any construction permit, Owner/Permittee shall assure by permit and bond the installation of a traffic signal at the intersection of Otay Pacific Drive / Otay Pacific Place with Phase 1 or as warranted, satisfactory to the City Engineer.

Onsite Signal Installation:

68. Prior to the issuance of any construction permit, Owner/Permittee shall assure by permit and bond the installation of a traffic signal at the intersection of Las Californias Drive / Otay Pacific Place with Phase 1 or as warranted, satisfactory to the City Engineer.

Onsite Signal Installation:

69. Prior to the issuance of any construction permit, Owner/Permittee shall assure by permit and bond the installation of a traffic signal at the intersection of Otay Pacific Place and the parking structure driveway with Phase 1 or as warranted, satisfactory to the City Engineer.

Driveways:

70. All driveway locations shall be satisfactory to the City Engineer.

Shared Access for Lot 7 and Lot 11:

71. The only access for Lot 7 shall be a shared access with Lot 6, and the only access for Lot 11 shall be a shared access with Lot 12.

TRANSPORTATION/CIRCULATION MMRP CONDITIONS: Direct Impacts

Phase 1

72. **Tra-1** Britannia Boulevard/Otay Mesa Road: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the construction of an additional northbound right-turn lane at the intersection of Britannia Boulevard/Otay Mesa Road, satisfactory to the City Engineer. In the event right-of-way for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.
73. **Tra-2** La Media Road/Airway Road: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the signalization of the intersection of Airway Road/La Media Road, satisfactory to the City Engineer.
74. **Tra-3** Siempre Viva Road between Otay Pacific Drive and Britannia Boulevard: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the widening of Siempre Viva Road on its north side between Otay Pacific Drive and the western project boundary, to provide an interim four-lane major roadway with a raised center median, satisfactory to the City Engineer.

In the event biological permits for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.

Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the widening of the north side of Siempre Viva Road, the restriping of the roadway, and the construction of an interim asphalt median, to provide a four-lane major roadway between the western project boundary and Britannia Boulevard, satisfactory to the City Engineer. In the event biological permits for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.

75. **Tra-4** Airway Road between Paseo de las Americas and SR-905: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the restriping of Airway Road between Paseo de las Americas and SR-905 to provide a two-lane collector arterial with center two-way left turn lane, satisfactory to the City Engineer.

76. **Tra-5** Britannia Boulevard between SR-905 and Airway Road: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the widening of the east side of Britannia Boulevard to provide an additional northbound through lane, and the re-stripping of the western side (southbound approach) to three southbound lanes between Airway Road and SR-905 to provide a six-lane major arterial, satisfactory to the City Engineer. In the event right-of-way for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.
77. **Tra-6** Britannia Boulevard between Airway Road and Siempre Viva Road: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of Britannia Boulevard on both sides between Airway Road and Siempre Viva Road to provide a six-lane major arterial, satisfactory to the City Engineer. In the event right-of-way for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.
78. **Tra-7** Otay Pacific Place between Otay Pacific Drive and Las Californias Drive: Prior to issuance of any construction permit for, the Owner/Permittee shall assure by permit and bond the widening of Otay Pacific Place between Otay Pacific Drive and Las Californias Drive to provide a four-lane collector arterial, satisfactory to the City Engineer.
79. **Tra-8** Heritage Road-Otay Valley Road between Avenida de las Vistas and Otay Mesa Road: Prior to issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the widening of Heritage Road-Otay Valley Road from immediately north of Datsun Street to Otay Mesa Road to a two-lane collector with a center two-way left turn lane, satisfactory to the City Engineer. In the event right-of-way for this improvement cannot be acquired in a timely manner, the Owner/Permittee may enter into a Deferred Improvement Agreement for this improvement prior to issuance of any construction permit; however, in that event, this improvement shall be completed with Phase 2 of the project, satisfactory to the City Engineer.”

Phase 2

80. **Tra-9** Caliente Avenue/Otay Mesa Road: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of the east side of Caliente Avenue to construct an additional northbound exclusive right-turn lane at the intersection of Caliente Avenue/Otay Mesa Road, satisfactory to the City Engineer.

81. **Tra-12** Siempre Viva Road between Britannia Boulevard and Las Californias Drive: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of Siempre Viva Road between Otay Pacific Drive and Las Californias Drive to provide a four lane collector without a two-way left turn lane, satisfactory to the City Engineer.
82. **Tra-16** Airway Road between Caliente Avenue and Old Otay Mesa Road: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of Airway Road between Caliente Avenue and Old Otay Mesa Road to a four-lane collector arterial, satisfactory to the City Engineer.
83. **Tra-17** Otay Mesa Road between SR-125 southbound ramp and La Media Road: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips, the Owner/Permittee shall assure by permit and bond the widening of the south side of Otay Mesa Road between SR-125 southbound ramp and La Media Road to provide a six-lane major arterial, satisfactory to the City Engineer.
84. **Tra-21** Otay Pacific Drive between Siempre Viva Road and Otay Pacific Place: Prior to issuance of any construction permit for development in excess of 13,683 average daily trips,, the Owner/Permittee shall assure by permit and bond the widening of the western side of the roadway and construct a raised center median to provide a four lane major arterial, satisfactory to the City Engineer.
85. **Tra-66** Otay Pacific Drive between Siempre Viva Road and Otay Pacific Place: Prior to issuance of any construction permit for development in excess of 24,652 average daily trips, the Owner/Permittee shall widen the west side of Otay Pacific Drive, from 250 feet south of the south curblines of Siempre Viva Road to Otay Pacific Place, as a 4-lane major arterial with 74 feet curb-to-curb within 112 feet of right-of-way and a 14 foot wide raised center median; and, on the west side of the street, new curb, gutter and a minimum five foot wide non-contiguous sidewalk within a 14 foot parkway, satisfactory to the City Engineer.
86. **Tra-67** Las Californias Drive between Siempre Viva Road and Otay Pacific Place: Prior to issuance of any construction permit for development in excess of 24,652 average daily trips, the Owner/Permittee shall restripe Las Californias Drive between Siempre Viva Road and Otay Pacific Place to provide a two-lane collector with a two-way left turn lane, satisfactory to the City Engineer.
87. **Tra-68** Otay Pacific Place between Otay Pacific Drive and Las Californias Drive: Prior to issuance of any construction permit for development in excess of 24,652 average daily trips, the Owner/Permittee shall widen Otay Pacific Place, from Otay Pacific Drive to Las Californias Drive, with 70 feet curb-to-curb within 94 feet of right-of-way; and, on the south side of the street, new curb, gutter and a minimum 5 foot wide non-contiguous sidewalk within a 14 foot curb-to-property line distance, satisfactory to the City Engineer.

The following mitigation measure shall be implemented by the project as each lot of the project builds out.

87. **Tra-86** Development on the project site shall be limited to no greater than 46,691 ADT, with a maximum 1,505 a.m. peak-hour inbound trips, maximum 808 am a.m. peak-hour outbound trips, maximum 1,116 p.m. peak-hour inbound trips, and maximum 1,431 p.m. peak-hour outbound trips. For each development proposed within the project, the project applicant(s) shall submit to the City a Tracking Table that provides a summary of total ADT generated, AM peak hour in, AM peak hour out, PM peak hour in, and PM peak hour out to allow for a flexible development program while ensuring that the total ADT and peak hour thresholds for the project are not exceeded. Should the buildout of the project result in an excess of any of the above trip thresholds, an amendment to this permit shall be required unless a traffic analysis demonstrating that no new significant traffic impacts would result is completed by the applicant(s) to the satisfaction of the City Engineer.

INFORMATION ONLY:

- If the applicant can demonstrate that construction of transportation improvements identified above in Conditions of Approval 74 through 79, and 81 through 85 provides transportation capacity above what is necessary to serve the proposed development, but is necessary to mitigate the project's direct impacts, then the project applicant may request the City enter into a reimbursement agreement. The method of collecting reimbursement may include mechanisms such as a cost reimbursement district, reimbursement agreement, assessment district, community facilities district, infrastructure financing district, conditions of approval of land use entitlements of a benefiting property, etc. If the improvement is included in the Otay Mesa Public Facilities Financing Plan (OMPFFP) and is the subject of a reimbursement agreement, reimbursement may be in the form of either cash, or credit and will be available as programmed in the OMPFFP as updated periodically.
- 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 City Council of the City of San Diego on JAN 10 2012.

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Sandra Teasley
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.

OTAY-TIJUANA VENTURE, LLC
Owner/Permittee

By _____