

ITEM # 330

(R-2013-408)

SUB-C

1/29/13

RESOLUTION NUMBER R- 307981

DATE OF FINAL PASSAGE JAN 29 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO ADOPTING SITE DEVELOPMENT PERMIT
NO. 951539 FOR BIOMED INNOVATION CENTER
PROJECT NO. 270734.

WHEREAS, BMR-Executive Drive LLC, Kevin M. Simonsen, Vice President, Real Estate Counsel, Owner/Permittee, filed an application with the City of San Diego for a Site Development Permit to demolish the existing, unoccupied building and subterranean parking structure and construct three Research and Development (R&D) buildings totaling 250,000 square feet above three levels of subterranean parking, known as the BioMed Innovation Center Project, located at 4775 and 4785 Executive Drive, and legally described as Parcels 2 and 3 of Map No. 20044, in the University Community Plan area, in the IP-1-1 zone; and

WHEREAS, on November 15, 2012, the Planning Commission of the City of San Diego considered Site Development Permit (SDP) No. 951539, and pursuant to Resolution No. 4850-PC voted to recommend City Council approval of the Permit; and

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

WHEREAS, the matter was set for public hearing on January 29, 2013, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Site Development Permit No. 951539:

SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC)
SECTION 126.0504

1. The proposed development will not adversely affect the applicable land use plan. The project site is identified in the General Plan's Economic Prosperity Element as Prime Industrial Land on Figure EP-1. Prime industrial lands are areas that support export-oriented base sector activities such as warehouse distribution, heavy or light manufacturing, research and development uses. These areas are part of even larger areas that provide a significant benefit to the regional economy and meet General Plan goals and objectives to encourage a strong economic base. The proposed project is located within the Central Subarea of the University Community Plan (UCP) and is designated for Scientific Research use. The proposed development would increase the allowable development intensity of scientific research use within the UCP. The proposed development would construct three, three-story scientific research buildings for a total of 250,000 square feet that would help provide additional quality job opportunities including middle-income jobs and provide secondary employment and supporting uses. Retention and growth of scientific research use in this area would also provide greater opportunities for collaboration with other scientific research uses in the immediate vicinity, in the Torrey Pines Mesa area of the community as well as with UCSD. The project is consistent with the goals and policies of the General Plan and University Community Plan. Therefore, the proposed project will not adversely affect the applicable land use plan.

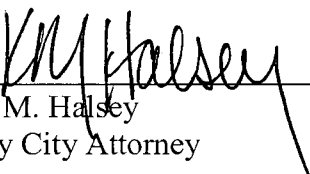
2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed project will connect all necessary sewer and water facilities to serve the occupants of the development. The project will incorporate construction Best Management Practices (BMP) necessary to comply with Chapter 14 Article 2, Division 1 of the San Diego Municipal Code. The project will prepare and implement a Water Pollution Control Plan in accordance with the guidelines in Appendix E of the City's Storm Water Standards. The project will enter into a Maintenance Agreement for ongoing permanent BMP maintenance. The project will comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 2009-0009-DWQ and Amended by Order No. 2010-0014-DWQ and the Municipal Storm Water Permit, Order No. R9-2007-0001 (NPDES General Permit No. CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code, Title 24 and general municipal code requirements will be met with the proposed project. Therefore, the proposed project will not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code. The proposed project complies with the relevant regulations of the Land Development Code. Conditions of approval require the continued compliance with all relevant regulations of the City of San Diego effective for this site and incorporated into Site Development Permit No. 951539. The proposed project conforms to the overall policies and regulations of the City of San Diego and represents a desirable project for the site and the University community.

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

BE IT FURTHER RESOLVED, that Site Development Permit No. 951539 is granted to BMR-Executive Drive LLC, Kevin M. Simonsen, Vice President, Real Estate Counsel, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By  _____
Keely M. Halsey
Deputy City Attorney

KMH:als
01/02/13
Or.Dept:DSD
Doc. No. 492036

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: 24002394

SITE DEVELOPMENT PERMIT NO. 951539
BIOMED INNOVATION CENTER PROJECT NO. 270734 MMRP
AMENDMENT TO SITE DEVELOPMENT PERMIT NO. 9754
CITY COUNCIL

This Site Development Permit No. 951539, Amendment to Site Development Permit No. 9754, is granted by the City Council of the City of San Diego to BMR-Executive Drive LLC, Kevin M. Simonsen, Vice President, Real Estate Counsel, Owner/Permittee, pursuant to San Diego Municipal Code (SDMC) section 126.0504. The 7.076 -acre site is located at 4775 and 4785 Executive Drive in the IP-1-1 Zone, Community Plan Implementation Overlay Zone (CPIOZ; Type A), North University City Facilities Assessment District, Parking Impact Overlay Zone – Campus Impact Area (western portion of the project site), Prime Industrial Lands Overlay Zone, FAA Part 77 Noticing Area, Airport Land Use Compatibility Overlay Zone for MCAS Miramar, Airport Environs Overlay Zone (60-65 CNEL), and Airport Influence Area (MCAS Miramar Review Area 1) within the University Community Plan Area. The project site is legally described as: Parcels 2 and 3 of Parcel Map No. 20044.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to demolish the existing, unoccupied building and subterranean parking structure and construct three Research and Development (R&D) buildings totaling 250,000 square feet above three levels of subterranean parking, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 29, 2013, on file in the Development Services Department.

The project shall include:

- a. Demolition of existing, unoccupied 51,858 square foot building and subterranean parking structures;

- b. Construction of three, three-story Research and Development (R&D) Buildings totaling 250,000 square feet above an approximately 310,332 square foot subterranean parking garage. The buildings are described as:
 - Building One – 83,743 square feet
 - Building Two – 81,656 square feet
 - Building Three – 84,601 square feet
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking; and
- e. Incorporation of sustainable building techniques sufficient to achieve Leadership in Energy and Environmental Design (LEED) Silver Certification, providing a minimum of 30% energy reduction and 20% water use reduction; and
- f. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

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 January 29, 2016.
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.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.
12. The mitigation measures specified in the MMRP and outlined in Addendum to Mitigated Negative Declaration No. 5906, Project No. 270734, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.
13. The Owner/Permittee shall comply with the MMRP as specified in Addendum to Mitigated Negative Declaration No. 5906, Project No. 270734, 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
Historical Resources (Archaeological)
Paleontological Resources**

AIRPORT REQUIREMENTS:

14. Prior to issuance of the first building permit, the Owner/Permittee shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration (FAA).

ENGINEERING REQUIREMENTS:

15. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the replacement of the existing driveways with City standard driveways, satisfactory to the City Engineer.
16. Prior to the issuance of any building permit, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement for the proposed curb outlet located within the City's right-of-way, satisfactory to the City Engineer.
17. The drainage system for this project shall be private and will be subject to approval by the City Engineer.

18. Prior to the issuance of any building permit, the Owner/Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

19. 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.

20. 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.

21. 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.

22. Development of this project shall comply with all storm water construction requirements of the State Construction General Permit, Order No. 2009-0009-DWQ and the Municipal Storm Water Permit, Order No. R9-2007-0001. In accordance with Order No. 2009-0009DWQ, a Risk Level Determination shall be calculated for the site and a Storm Water Pollution Prevention Plan (SWPPP) shall be implemented concurrently with the commencement of grading activities.

23. Prior to issuance of a grading or a construction permit, a copy of the Notice of Intent (NOI) with a valid Waste Discharge ID number (WDID#) shall be submitted to the City of San Diego as a proof of enrollment under the Construction General Permit. When ownership of the entire site or portions of the site changes prior to filing of the Notice of Termination (NOT), a revised NOI shall be submitted electronically to the State Water Resources Board in accordance with the provisions as set forth in Section II.C of Order No. 2009-0009-DWQ and a copy shall be submitted to the City.

GEOLOGY REQUIREMENTS:

24. 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 the Development Services Department prior to issuance of any construction permits.

25. The Owner/Permittee shall submit an as-graded geotechnical report prepared in accordance with the City's "Guidelines for Geotechnical Reports" following completion of the grading. The as-graded geotechnical report shall be reviewed for adequacy by the Geology Section of the Development Services Department prior to exoneration of the bond and grading permit close-out.

PLANNING/DESIGN REQUIREMENTS:

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

27. Incorporation of sustainable building techniques sufficient to achieve Leadership in Energy and Environmental Design (LEED) Silver Certification, providing a minimum of 30% energy reduction and 20% water use reduction.

28. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations.

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

30. Prior to issuance of construction permits, the Owner/Permittee shall include a representative of the Environmental Services Department (ESD) and owner/representative to attend preconstruction meetings to ensure that:

- An appropriate destination for soils has been identified;
- An appropriate destination for concrete and asphalt has been identified;
- Grubbed material is separated and taken to Miramar Landfill Greenery;
- Contract documents have recycling specifications included;
- A solid waste coordinator has been identified;
- An appropriate number of bins are provided with appropriate signage;
- Bins are appropriately used and contamination levels are minimized;
- The C&D Ordinance deposit has been paid;
- An appropriate diversion rate has been included on the deposit form (75% minimum) and
- Materials are being taken to the appropriate facility.

31. Prior to final inspection or issuance of any Certificate of Occupancy the Owner/Permittee shall contact a representative of the Environmental Services Department to schedule an appointment to:

- Inspect and approve a storage area that has been provided consistent with the City's Storage Ordinance;
- Ensure that a hauler has been retained to provide recyclable materials collection and yard waste collection; and
- Inspect and approve the education materials for building tenants/owners that are required pursuant to the City's Recycling Ordinance.

32. Prior to the issuance of any construction permits, the construction plans and specifications shall indicate in the general notes or individual detail drawings the design features, product specifications, and methods of construction and installation that are required to surpass the 2008 Title 24, Energy Efficiency Standards by a minimum of 30%.

33. Prior to the issuance of any construction permits, construction plans and specifications shall indicate in the general notes or individual detail drawings the advanced water conservation features, product specifications and methods of construction and installation that are required to meet a 20% reduction in accordance with the CalGreen.

34. Prior to issuance of the first occupancy permit, the Owner/Permittee shall submit a independent third party report on the building's energy and water conservation features including inspections and diagnostics as part of the LEED verification and commissioning process. The report shall include any additional inspections that may be conducted as needed to ensure continued compliance and to provide the City with information and documents showing use of products, equipment, and materials as specified on the construction plans and documents, to the satisfaction of the Director, Development Services Department.

35. Prior to issuance of a construction permit, construction plans and specifications shall indicate in the general notes or individual detail drawings that paints and solvents used shall include low volatile gas content (less than 150 grams per liter).

TRANSPORTATION REQUIREMENTS

36. Owner/Permittee shall maintain a minimum of 750 off street parking spaces (project is providing 875 off-street parking spaces) including 19 accessible (2 van accessible) parking spaces, 8 bicycle parking spaces, 8 bicycle locker spaces and 15 motorcycle parking spaces shall be provided as shown on the project's Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

37. Prior to issuance of the first occupancy permit, the Owner/Permittee shall provide a fair-share contribution (3.7 percent of the improvement cost) towards the addition of an eastbound right turn lane at the intersection of Executive Drive/Judicial Drive, to the satisfaction of the City Engineer.

38. Prior to the issuance of the first occupancy permit, the Owner/Permittee shall complete the following improvements at the La Jolla Village Drive/Town Center Drive intersection, to the satisfaction of the City Engineer:

- a. Additional westbound right-turn lane, and
- b. Additional northbound through lane, and
- c. Additional southbound right-turn lane

PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:

39. Prior to the issuance of any building permits, the Owner/Permittee shall provide foundation calculations for the proposed building encroaching into the existing tunnel easement. The calculations will need to show that the design of the foundation will not impact the tunnel structure and easement.

40. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Director of Public Utilities and the City Engineer.

41. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of all public water facilities, including services and meters, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto.

42. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of all public sewer facilities are to be in accordance with established criteria in the most current City of San Diego sewer design guide.

43. All proposed private water and sewer facilities located within a single lot are to be designed to meet the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check.

44. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any water and sewer facilities.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on JAN 29 2013 , and by Resolution No. 307981 .

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Laura C. Black, AICP
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.**

BMR – EXECUTIVE DRIVE LLC.
Owner/Permittee

By _____
Kevin M. Simonsen
Vice President, Real Estate Counsel

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