

RESOLUTION NUMBER R- 312589

DATE OF FINAL PASSAGE JUL 29 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO GRANTING NEIGHBORHOOD DEVELOPMENT
PERMIT NO. 2106744 AND SITE DEVELOPMENT PERMIT
NO. 2287794 FOR LUMINA TM - PROJECT NO. 555609.

WHEREAS, CR Lumina Group, LLC, Owner/Permittee, filed an application with the City of San Diego for a Neighborhood Development Permit and a Site Development Permit for the subdivision of a 93.4-acre site with twelve (12) existing lots into twenty-four (24) lots for the future development of up to 1,868 residential dwelling units, up to 62,525 square feet of commercial uses, 6.3 acres of school/recreation uses, 6.6 acres of parks, and 16.2 acres of public streets, and vacation of an unimproved 0.3-acre portion of an unnamed road, including site grading and installation of public improvements required for the future development, known as the Lumina TM project, located west of Cactus Road, north of Siempre Viva Road and bisected by Airway Road, and legally described as Lots 48, 49, 50, 71, and 72 of Belvidere, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 1267, filed in the Office of the County Recorder of San Diego County, June 13, 1910; and a portion of the Southeast quarter of the northwest quarter of Section 33, together with the southwest quarter of Section 33, Township 18 South, Range 1 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California, according to the official plat thereof, in the Central Village Specific Plan, within the Otay Mesa Community Plan, in the RM-2-5, OR-1-2, CC-3-6 and AR-1-1 zones; and

WHEREAS, on May 23, 2019, the Planning Commission of the City of San Diego considered Neighborhood Development Permit No. 2106744 and Site Development Permit No.

2287794, and pursuant to Resolution No. 5023-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 July 29, 2019, 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 Neighborhood Development Permit No. 2106744 and Site Development Permit No. 2287794:

NEIGHBORHOOD DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0404

SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0505

(a) Findings for all Neighborhood & Site Development Permits:

(1) The proposed development will not adversely affect the applicable land use plan. The Lumina TM proposes a subdivision to create 24 lots on a 93.4-acre site. The subdivision would grade 92.4 acres onsite for future development and would grade 6.1 acres offsite for required public right-of-way and utility improvements. No structures would be constructed with this subdivision. The project site is located in the Central District of the Otay Mesa Community Plan (OMCP) which designates the site for Community Village (30-35 du/ac), Parks, Open Space, and Institutional land uses. The site is also located within the Central Village Specific Plan (CVSP), which was created as required by the OMCP to help implement the goals of the OMCP with site-specific standards and guidelines. The CVSP identifies the site for Medium High Mixed Use at 35-44 dwelling units per acre (du/ac) and 25-40 du/ac, Medium Density Multi-Family at 15-29 du/ac and 20-29 du/ac dwelling units per acres, Park land use, School/Recreation Facility land use, and Open Space land use. The project would implement the CVSP and would allow for up to 1,868 multi-family residential dwelling units and up to 62,525

square feet of commercial uses, including commercial and residential mixed-use areas, recreational parks, a school/recreation facilities site, central recreation area, and open space with approval of a future Neighborhood Development Permit application in accordance with the CVSP. Therefore, the proposed project is consistent with the goals, policies, and objectives of the OMCP and CVSP.

(2) The proposed development will not be detrimental to the public health, safety and welfare. The Lumina TM proposes a subdivision to create 24 lots on a 93.4-acre site. The subdivision would grade 92.4 acres onsite for future development and would grade 6.1 acres offsite for required public right-of-way and utility improvements. No structures would be constructed with this subdivision. The proposed project is consistent with all requirements of the CVSP, Land Development Code, and Subdivision Map Act and will not be detrimental to public health, safety, and welfare in that the permit controlling the grading and future development of the site contains specific conditions addressing compliance with the City's codes, policies, and regulations, as well as other regional, state, and federal regulations to prevent detrimental impacts to the health, safety and general welfare of persons residing and/or working in the area. Prior to issuance of any grading permits for the proposed project, the plans will be reviewed for compliance with all conditions of approval.

Addendum No. 555609 to the Otay Mesa Community Plan Update (OMCPU) Program Environmental Impact Report (PEIR) No. 30330/304032 has been prepared for this project in accordance with California Environmental Quality Act (CEQA) guidelines. A Mitigation, Monitoring and Reporting Program (MMRP) would be implemented with this project to mitigate impacts related to Land Use, Air Quality/Odor, Biological Resources, Historical Resources, Human Health/Public Safety/Hazardous Materials, Hydrology/Water Quality, Geology/Soils, Noise, Paleontological Resources, Transportation/Circulation, Utilities and Greenhouse Gas Emissions. The proposed project would not result in any additional significant impacts nor would it result in an increase in the severity of impacts from that described in the previously certified OMCPU EIR. Therefore, the proposed development will not be detrimental to the public health, safety, and welfare.

(3) The proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. The Lumina TM proposes a subdivision to create 24 lots on a 93.4-acre site. The subdivision would grade 92.4 acres onsite for future development and would grade 6.1 acres offsite for required public right-of-way and utility improvements. No structures would be constructed with this subdivision. The site is located within the CVSP, which provides site-specific requirements that supplement the Land Development Code requirements. The proposed development complies with the applicable zoning and development regulations of the CVSP, as well as other requirements of the Land Development Code. No deviations are required or proposed as part of the development.

The CVSP requires a Process Two NDP be processed prior to issuance of ministerial permits to establish site design, building orientation, building elevations, building floor plans, walls/fencing, and landscaping for implementing developments, in accordance with SDMC Section 126.0403. Although the project scope does not include construction of any units or

buildings, it does include grading, public improvements, utility installation, landscaping and other physical improvements. Therefore, an NDP is included to allow the project improvements and the Addendum No. 555609 to the OMCPU PEIR. A future NDP would be required to allow for development of the site with up to 1,868 residential dwelling units, 62,525 square feet of commercial uses, 6.3 acres of school/recreation uses, 6.6 acres of park uses, and 4.0 acres of open space uses in accordance with the CVSP.

Therefore, the proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

(b) Supplemental Findings – Environmentally Sensitive Lands

(1) The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands. The Lumina TM is a mostly vacant 93.4-acre site located within the CVSP. The proposed project would allow for future development of up to 1,868 multi-family residential dwelling units and 62,525 square feet of commercial uses, including commercial and residential mixed-use areas, recreational parks, a school/recreation facilities site, a central recreation area, and open space with a future Neighborhood Development Permit application (not currently proposed) in accordance with the CVSP. The previously disturbed project site is relatively level with onsite elevations ranging from approximately 404 feet above mean sea level (AMSL) to the southwest to 524 feet AMSL at the northeast.

The site is located within or adjacent to Multi-Habitat Planning Area (MHPA) lands and would encroach into the MHPA beyond the allowable development area pursuant to Sections 143.0142 and 131.0250(b) of the Land Development Code and pages 13-15 of the City's Biology Guidelines; thus, an MHPA boundary line adjustment is required. The project would maintain the on-site MHPA-designated areas as open space, with the exception of one area where the City of San Diego General Plan and CPU call for Airway Road to traverse the MHPA and one area related to TM Lot 1, which includes a private drive within Planning Area 9 from Airway Road.

Furthermore, access to Planning Area 9 (and the Airway Road detention basin) from Airway Road is necessary to be from the signalized intersection with Village Way, which results in the private drive on site passing through the MHPA.

The private drive is necessary to provide adequate access to the site, including emergency access, and is necessary to be from the signalized intersection with Village Way in order to accommodate the City's Street Design Manual minimum intersection spacing requirements between signalized intersections along Primary Arterial roadways.

Additionally, the City's Street Design Manual states that intersections of local roadways (i.e., the private drive) and major streets (i.e., Airway Road) should be kept to a minimum. Thus, the private drive is necessary to be from the signalized intersection with Village Way instead of elsewhere in the area to minimize the number of intersections of local roadways and major streets along Airway Road. The intersection location and storm drain facilities included as part of

the Lumina Project are considered supporting features of the ultimate buildout of the OMCPU Circulation Element pursuant to the approved OMCPU and CVSP. Given the City's Street Design Manual requirements for intersection spacing from Cactus Road and minimization of intersections of local roadways and major streets, there is no other location option for the access road.

Additionally, although Airway Road would traverse a portion of the City's MHPA, (approximately 1.2 acres) Airway Road is a Mobility Element-designated facility and was planned to traverse MHPA areas by the CPU. Pursuant to the MSCP, Community Plan Mobility Element facilities are allowed to traverse MHPA areas.

The proposed project would result in a total of 2.0 acres of impacts to sensitive habitat located inside the MHPA. This includes 1.2 acres of Airway Road impacts allowed within the MHPA and 0.8 acre of impact to be removed from the MHPA through the MHPA BLA process pursuant to the MSCP Subarea Plan. The Wildlife Agencies provided concurrence on the project's MHPA BLA on March 29, 2019.

The project proposes to remove 0.8 acre from the MHPA as part of development of TM Lot 1, which includes the private drive. The project also proposes to add 3.1 acres to the MHPA, which would result in a net gain to the MHPA of 2.3 acres and would reduce the mitigation ratios for project-related impacts. Pursuant to the requirements of the MSCP Subarea Plan, a MHPA boundary line adjustment (BLA) was required for removal of 0.8 acre of impact from the MHPA related to TM Lot 1. An equivalency analysis for the proposed MHPA removal and the addition of lands contiguous to the MHPA is provided in the project's Biological Technical Report.

Additionally, project implementation would result in impacts to 4.6 acres of Environmentally Sensitive Lands (ESL) located outside of the MHPA including 0.5 acre of impact to maritime succulent scrub (Tier I habitat), 1.7 acres of impact to Diegan coastal sage scrub (Tier II habitat), and 2.4 acres of impact to non-native grasslands (Tier IIIB habitat). All project ESL impacts would be mitigated through the restoration and preservation of land within the MHPA or added to the MHPA, as required by the MMRP associated with Addendum No. 555609 to the OMCPU PEIR.

The project would mitigate for 0.5 acre of Maritime succulent scrub impacts through off-site preservation within a 1.3-acre area located immediately west of the project site, adjacent to other biological mitigation land, which is referred to as the Sorenson parcel. Impacts to 1.7 acres of Diegan coastal sage scrub located outside the MHPA would be mitigated through off-site preservation/restoration within a 1.8-acre area located approximately 0.25 mile west of the project site, adjacent to other biological mitigation land, which is referred to as the Barton parcel. Impacts to 2.4 acres of non-native grassland located outside of the MHPA would be mitigated through on- and off-site preservation. The site is not located in a flood plain and is not associated with any known geologic, hazardous materials site or other physical condition that would preclude the proposed development. Therefore, the site is physically suitable for the type and density of development.

Addendum No. 555609 to the OMCPU PEIR has been prepared for this project in accordance with CEQA guidelines. An MMRP would be implemented with this project to mitigate potentially significant impacts to Land Use, Air Quality/Odor, Biological Resources, Historical Resources, Human Health/Public Safety/Hazardous Materials, Hydrology/Water Quality, Geology/Soils, Noise, Paleontological Resources, Transportation/Circulation, Utilities, and Greenhouse Gas Emissions.

Technical studies have been prepared to address the environmental impacts of the project and have not identified any constraints that would prevent the development from being physically suitable for the project. Therefore, the site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to ESL.

(2) The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards. The previously graded site is generally level with onsite elevations ranging from approximately 404 feet AMSL to the southwest to 524 feet AMSL at the northeast and the proposed project would substantially maintain these elevations and drainage patterns. The project would not be subject to undue geologic risk as no known active faults traverse the project site. The site does not contain and is not adjacent to any watercourses and is not located in a flood zone hazard area. The project would not result in undue risk from fire hazards as it is located in a mostly developed, residential and industrial area, surrounded by existing residential and industrial uses and SR-905 to the north and residential and industrial development to the east. Therefore, 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.

(3) The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. The Lumina TM proposes a subdivision to create 24 lots on a 93.4-acre site. The subdivision would grade 92.4 acres onsite for future development and would grade 6.1 acres offsite for required public right-of-way and utility improvements. No structures would be constructed with this subdivision. Of these 98.5 acres of on- and off-site impact, 0.5 acre would be to Maritime succulent scrub disturbed (Tier I habitat), 1.5 acres to Diegan coastal sage scrub (Tier II habitat), 2.8 acres to Diegan coastal sage scrub-disturbed (Tier II habitat), 3.7 acres to non-native grassland (Tier IIIB habitat), 0.3 acre to non-native vegetation (Tier IV habitat), 61.7 acres to agriculture (Tier IV habitat), 5.9 acres to disturbed land (Tier IV habitat), and 25.8 acres to urban/developed land.

The project proposes to remove 0.8 acre from the MHPA as part of development of Lot 1, which includes the private drive. The project also proposes to add 3.1 acres to the MHPA, which would result in a net gain to the MHPA of 2.3 acres and would reduce the mitigation ratios for project impacts. All on- and off-site project ESL impacts would be mitigated through the restoration and preservation within on- and off-site areas, as required by the MMRP associated with the project's Addendum No. 555609 to the OMCPU PEIR.

The site is immediately adjacent to SR-905 and existing residential and industrial development to the north, existing residential and industrial development to the south and east,

and undeveloped and agricultural land uses (located within the CVSP area). There are ESLs located immediately north and west of the site. Lands located north of the project site are within the MHPA. Lands located west of the project site are not located in the MHPA, but do potentially contain ESLs.

All proposals within the CVSP area west of the project would be required to identify appropriate mitigation similar to this project. Therefore, the proposed development will be sited and designed to prevent adverse impacts on any adjacent ESL.

(4) The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan and Vernal Pool Habitat Conservation Plan (VPHCP). The Lumina TM is a mostly vacant 93.4-acre site located within the CVSP. The proposed project would allow for future development of up to 1,868 multi-family residential dwelling units and 62,525 square feet of commercial uses, including commercial and residential mixed-use areas, recreational parks, a school/recreation facilities site, a central recreation area, and open space with a future Neighborhood Development Permit application (not currently proposed) in accordance with the CVSP. The previously disturbed project site is relatively level with onsite elevations ranging from approximately 404 feet above mean sea level (AMSL) to the southwest to 524 feet AMSL at the northeast.

The site is located within and adjacent to MHPA lands and would encroach into the MHPA beyond the allowable development area pursuant to Sections 143.0142 and 131.0250(b) of the Land Development Code and pages 13-15 of the City's Biology Guidelines; thus, an MHPA boundary line adjustment was required.

The project would maintain the on-site MHPA-designated areas as open space, with the exception of one area where the City of San Diego General Plan and OMCPU call for Airway Road to traverse the MHPA and one area related to TM Lot 1, which includes a private drive within Planning Area 9 from Airway Road. The proposed project would result in a total of 2.0 acres of impacts to sensitive habitat located inside the MHPA. This includes 1.2 acres of Airway Road impacts allowed within the MHPA and 0.8 acre of impact to be removed from the MHPA through the MHPA BLA process pursuant to the MSCP Subarea Plan. The Wildlife Agencies provided concurrence on the project's MHPA BLA on March 29, 2019.

The project proposes to remove 0.8 acre from the MHPA as part of development of TM Lot 1, which includes the private drive. The project also proposes to add 3.1 acres to the MHPA, which would result in a net gain to the MHPA of 2.3 acres and would reduce the mitigation ratios for project-related impacts. Pursuant to the requirements of the MSCP Subarea Plan, a MHPA BLA was required for removal of 0.8 acre of impact from the MHPA related to TM Lot 1. An equivalency analysis for the proposed MHPA removal and the addition of lands contiguous to the MHPA is provided in the project's Biological Technical Report.

Additionally, project implementation would result in impacts to 4.6 acres of ESL located outside of the MHPA including 0.5 acre of impact to maritime succulent scrub (Tier I habitat), 1.7 acres of impact to Diegan coastal sage scrub (Tier II habitat), and 2.4 acres of impact to non-native grasslands (Tier IIIB habitat). All project ESL impacts would be mitigated through the

restoration and preservation of land within the MHPA or added to the MHPA, as required by the MMRP associated with the project's Addendum No. 555609 to the OMCPU PEIR.

The project would mitigate for 0.5 acre of Maritime succulent scrub impacts through off-site preservation within a 1.3-acre area located immediately west of the project site, adjacent to other biological mitigation land, which is referred to as the Sorenson parcel. Impacts to 1.7 acres of Diegan coastal sage scrub located outside the MHPA would be mitigated through off-site preservation/restoration within a 1.8-acre area located approximately 0.25 mile west of the project site, adjacent to other biological mitigation land, which is referred to as the Barton parcel. Impacts to 2.4 acres of non-native grassland located outside of the MHPA would be mitigated through on- and off-site preservation. Therefore, the proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The project would be consistent with the VPHCP in that there are no vernal pools located within the project site.

(5) The proposed development will not contribute to the erosion of public Beaches or adversely impact local shoreline sand supply. The project would implement water quality measures and Best Management Practices to prevent adverse impacts to environments downstream from the site. The project is located approximately eight miles from a public beach and would not require the use of beach sand for any purpose.

The project has been conditioned to comply with the current State of California water quality standards and therefore will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

(6) The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development. Addendum No. 555609 to the OMCPU PEIR has been prepared for the project in accordance with CEQA Guidelines. An MMRP would be implemented with this project to reduce potential impacts to below a level of significance. All of the mitigation measures required as conditions of the permit are appropriate and proportional for the project in consideration of the current accepted best practices and scientific analysis standards. None of the mitigation measures are without rational basis in fact or accepted best practices and scientific analysis standards. The SDMC, Land Development Manual, Community Plan, General Plan, CEQA Significance Thresholds, PEIR and Addendum, and technical studies prepared for the development were utilized to determine project impacts and required mitigation. Therefore, 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) Supplemental Findings – Environmentally Sensitive Lands Deviations

(1) There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands. As described in Supplemental Findings – Environmentally Sensitive Lands, Finding No. (b)(1) above, the impacts are necessary to provide access to the site and to implement the land uses identified by the OMCP and CVSP. The subdivision has been designed to avoid to the extent possible adverse effects on ESL. All ESL

impacts would be properly mitigated with implementation of the project MMRP in Addendum No. 555609 to the OMCPU PEIR MMRP, which includes preservation of lands and an MHPA BLA, which has been approved by the Wildlife Agencies. Therefore, there are no feasible measures that can further minimize the potential adverse effects on ESL.

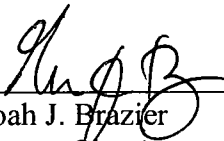
(2) The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making. As described in Supplemental Findings – Environmentally Sensitive Lands, Finding No. (b)(1) above, the impacts are the minimum necessary to provide access to the site and to implement the land uses identified by the OMCP and CVSP. The subdivision and access points have been designed to the extent possible to be sensitive to the exiting topography, ESL, public right-of-way access points and to fully implement the OMCP and CVSP land use designations. Therefore, the proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant's making.

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

BE IT FURTHER RESOLVED, that Neighborhood Development Permit No. 2106744 and Site Development Permit No. 2287794 is hereby granted to CR Lumina Group, LLC, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

BE IT FURTHER RESOLVED, that the MHPA Boundary Line Adjustment as shown on Tentative Map No. 1972222 is approved.

APPROVED: MARA W. ELLIOTT, City Attorney

By  _____
Noah J. Brazier
Deputy City Attorney

NJB:als
07/09/2019
Or.Dept:DSD
Doc. No.: 2039987

Attachment: Neighborhood Development Permit and Site Development Permit

- c. Creation of home owner association lots, consisting of two bio-filtration basin lots (TM Lots 20 & 22), one slope area lot and one open space lot (TM Lot 21) associated with future development;
- d. Construction of off-site improvements including:
 - (1) To the north of Airway Road, and consistent with the CVSP, Cactus Road would be improved to its ultimate half-width section as a “Four-Lane Major (126-foot ROW),” which would provide for 64 feet of travel way along the southbound side of the road and 19 feet of travel way along the northbound side, a 6-foot wide raised median nose, an asphalt concrete (AC) berm along the eastern edge of the road, and a six-foot wide non-contiguous sidewalk within a 12-foot parkway along the Project boundary. To the south of Airway Road, and also consistent with the CVSP, Cactus Road would be improved to its ultimate half-width as a “Four-Lane Major Arterial (114-foot ROW),” including 19 feet of travel way along the northbound side of the road and 30 feet of travel way along the southbound side, a 16-foot wide raised median, and 8-foot wide non-contiguous sidewalk within a 26-foot wide parkway.
 - (2) To the west of Cactus Road, Airway Road would be improved as a “Six-Lane Primary Arterial” along the Project’s frontage with a total ROW width of 162 feet, with a 27-foot wide parkway on the eastbound side of the roadway accommodating a 6-foot wide non-contiguous sidewalk with a Class I bike path to be constructed by the Lumina Project and a 17-foot wide parkway on the westbound side of the roadway accommodating a 6-foot wide non-contiguous sidewalk. Between Cactus Road and Britannia Boulevard, Airway Road would be improved for access purposes as a traffic mitigation measure to provide between 70 and 96 feet of travel way with AC berms along both sides of the roadway. The segment of Airway Road east of Cactus Road ultimately would additionally be improved by others as a “Six-Lane Urban Major (139-foot ROW).”
 - (3) Construction of a new 18-inch sewer main in Cactus Road between proposed Street C and Siempre Viva Road. Construction of a 24-inch sewer force main within Cactus Road that would connect to existing Sewer Pump Station 23T.
 - (4) Construction of storm water drainage lines within Airway Road from the Project boundary to a connection point located east of the Airway Road and Cactus Road intersection; and construction of storm water drainage facilities within Cactus Road extending from south of Central Main Street to north of Siempre Viva Road, where flows would then drain to the Project’s proposed on-site biofiltration detention basin located in proposed Lot 20.

- e. Landscaping (planting, irrigation and landscape related improvements);
- 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 JUL 29 2022.
2. 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.
3. 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.
4. This Permit shall conform to the provisions and conditions of Tentative Map No. 1972222.
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. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the federal Endangered Species Act (ESA) and by the California Department of Fish and Wildlife (CDFW) pursuant to California Fish and Wildlife Code section 2835 as part of the Multiple Species Conservation Program (MSCP), the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement (IA), executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/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 Owner/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 CDFW, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, in accordance with Section 17.1D of the IA.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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

Passed by the Council of The City of San Diego on JUL 29 2019, by the following vote:

Councilmembers:	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 29 2019.

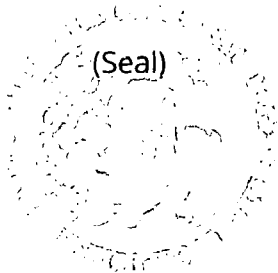
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Zynda Irwin, Deputy



Office of the City Clerk, San Diego, California

Resolution Number R- **312589**