

RESOLUTION NUMBER R- 314933

DATE OF FINAL PASSAGE MAY 23 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO GRANTING SITE DEVELOPMENT PERMIT NO.
2468436 AND NEIGHBORHOOD DEVELOPMENT PERMIT
NO. 2576649 FOR THE BDM MIXED-USE PROJECT –
PROJECT NO. 673818.

WHEREAS, BDM Investments LLC, a California Limited Liability Company,
Owner/Permittee, filed an application with the City of San Diego for Site Development Permit
No. 2468436 and Neighborhood Development Permit No. 2576649 to construct a mixed use
residential and commercial development of three to four level multi-family residential buildings
with 430 dwelling units that total 442,230 square feet of which 52 dwelling units will be
affordable to low income households with rents at 30% of 60% of Area Median Income, 6,000
square-feet of commercial uses, and associated site improvements. The 13.44-acre vacant site is
located south of Otay Mesa Road, east of Emerald Crest Court, southwest of Corporate Center
Drive, and north of State Route 905 (APN No. 645-410-0300 to 645-410-0900). The property is
legally described as lots 1, 2, 3, 4, 5, A, B, and C of Handler Commercial, in the City of San
Diego, County of San Diego, State of California, according to Map thereof of No. 16340, filed in
the Office of the of the County Recorder of San Diego County, May 7, 2019, as File No. 2019-
7000180 of Official Records; and

WHEREAS, on March 30, 2023, the Planning Commission of the City of San Diego
considered Site Development Permit No. 2468436 and Neighborhood Development Permit
No. 2576649 and voted 5-0-1 to approve the project by Resolution No. 5241-PC; and

WHEREAS, the matter was set for public hearing on May 23, 2023, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, the Office of the City Attorney has drafted this Resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; and

WHEREAS, under San Diego 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 City Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that it adopts the following findings with respect to Site Development Permit No. 2468436 and Neighborhood Development Permit No. 2576649:

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

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

a. **The proposed development will not adversely affect the applicable land use plan.** The project consists of the development of 430 multi-family residential dwelling units in three to four level buildings, including 6,000 square feet of commercial uses, and associated site improvements at a site located at the southeast corner of Emerald Crest Court and Otay Mesa Road in the northwestern area of the approved Otay Mesa East project (Project No. 108628) area, within the Southwest District of the Otay Mesa Community Plan (Community Plan) area. The surrounding area is developed with a variety of uses, including residential to the west and northwest, industrial to the east and north, open space to the north, and commercial to the northeast.

The project requires a Community Plan Amendment to change the land use designation from Community Commercial – Residential Prohibited to Community Commercial – Residential

Permitted, and a rezone from the CC-2-3 Zone (Commercial Community) to the CC-3-6 Zone (Commercial Community). The project also includes a Vesting Tentative Map to consolidate and subdivide 13.44 acres into four residential lots and a commercial lot, a public right-of-way vacation, and a public service easement vacation.

The project supports a land use that is consistent with the Community Plan and General Plan, and is compatible with the adjacent land uses. Amending the Community Plan to Community Commercial – Residential Permitted provides a land use designation that is consistent with the land uses within the Southwest District. The General Plan Village Propensity map identifies the site as medium to high propensity range, and the project is consistent with the prescribed range. The new homes will help meet the need for housing in the City, including providing 52 affordable housing units for low income households with rents at 30% of 60% of Area Median Income. The project will also provide residential development within a Transit Priority Area (TPA), locating new residents in close proximity to transit and commercial services.

The project is consistent with the Community Plan policies that address housing, including Policy 2.2-3 which recommends developing homes that are sized (studio, one, two and three-bedroom units) to meet the household family sizes in demand in the Otay Mesa community. The project is consistent with Policy 2.2-5 which recommends developing housing at different density ranges to provide housing affordable to all income levels and Policy 2.2-6 which promotes affordable housing development through the provision of a variety of housing types. In addition, 6,000 square feet of commercial space will be developed which is consistent with Community Plan Policy 2.3-2 that recommends maintaining commercial areas in Otay Mesa to support the development of retail, office, and other commercial services to serve surrounding areas.

As previously mentioned, the project site is located within the Southwest District of the Otay Mesa community which envisions village style development that is primarily residential with a mixed-use center for civic and neighborhood serving commercial uses and services. Community Plan Policy 4.1-8 in the Urban Design Element recommends that residential uses within the Southwest District minimize exposure from noise, traffic and air quality impacts associated with State Route (SR) 905 through the orientation of buildings and site planning, the design of buildings, landscape treatments, and distance separation. The project implements this policy by locating the surface parking area to the south along SR-90 and siting buildings away from the southern property line by no less than 100 feet along with a double row of evergreen trees within the surface parking area and incorporating trees with large shrubs along the southern perimeter of the project site. In addition, the noise study prepared for the project concluded that future noise levels could be further attenuated with upgraded building facade elements (i.e., windows, walls, doors, and/or exterior wall assemblies) with Sound Transmission Class (STC) ratings of 35 or higher which the projects implements.

Community Plan Policy 4.3-3 which addresses architectural details recommends that buildings and street frontages be developed with architectural interest adjacent to the public right-of-way and to include design features such as facade step backs, articulation, off-setting planes, unique roof forms, and varied building elevations. The project implements this

Community Plan policy by incorporating painted stucco surfaces with a variety colors, varying setbacks, balconies with metal railings, and offsetting planes and building articulation on all building elevations.

The project implements Community Plan Policy 4.3-7 related to creating visual and physical linkages within the project site through a unified landscape theme. The project includes landscaping that is consistent with the design recommendations of the Community Plan by incorporating a mix of low water use and climate appropriate plants that are adapted to the climate of the region. A range of 24-inch evergreen trees within the surface parking areas will provide shade and minimize heat gain. The project also includes 24-inch box Brisbane Box trees along Otay Mesa Road. The project will also install accents trees, evergreen screening trees, shrubs, grasses, and artificial turf recreational areas. Street trees will be planted along Otay Mesa Road, including shrubs, grasses, and landcovers.

Along the southern frontage of the project adjacent to the Caltrans right-of-way (ROW), the project includes screening with solid walls and fencing. Areas exposed to SR-905 will provide 100 percent screening in the form of evergreen plantings that will be distributed throughout the area. The eastern frontage of the project along Corporate Center Drive will include native trees and plants due to its proximity to the adjacent Multi-Habitat Planning Area (MHPA). Boulders will also be installed to discourage entry into the MHPA. Along the project western frontage of Emerald Crest Court, 24-inch box silk trees will be planted to match street improvements and landscape plans prepared along the western half of Emerald Crest Court adjacent to the residential development.

Community Plan Policy 4.2-1 related to pedestrian movement, sidewalks, and streets recommends that pedestrian-oriented design principles be implemented at the project level to activate the street and promote walkability. The project implements this Community Plan policy by including sidewalk connections between buildings, the onsite amenities and public sidewalks to enhance pedestrian connectivity. The project will also provide non-contiguous sidewalks and landscaped parkways along Otay Mesa Road that connect to the project's internal streets, walkways, and transit and bike facilities. Pedestrian access across the site will be accommodated by a six-foot-wide concrete paseo and interior streets and walkways that provide residents access to the centrally located community pool, several courtyards, tot-lot and fenced dog run that lead into commercial area through the project's interior streets and walkways to connect the residential and commercial areas.

The project design is compatible with the Transit Priority Area (TPA) designation of the site. The closest transit stop is located at Otay Mesa Road and Corporate Center Drive approximately 400 feet from the project site, and a Caltrans park and ride lot is located a half mile west at the terminus of Otay Mesa Road. The project site is located in close proximity to Metropolitan Transit System (MTS) Routes 905 A and B with planned high frequency transit service which connects the site to employment areas within Otay Mesa, including the Ocean View Hills Corporate Center and Otay Corporate Center South.

Community Plan Policy 3.4-1 (a) in the Mobility Element recommends the refinement and implementation of the Bicycle Master Plan in the Community Plan by developing bicycle

facilities that implement internal connectivity to activity areas within the community and links to the regional bicycle network. An existing Class III shared bicycle facility is located on Otay Mesa Road and can be accessed from the project site. The Community Plan recommends a future Class II bicycle lane for Otay Mesa Road. The project will provide this improvement by developing an 8-foot Class II bike lane along Otay Mesa Road and by installing bike racks in front of the commercial building along Emerald Crest Court.

The project complies with the Conservation Element goal of implementing urban runoff management techniques. The project will implement this goal by providing drought-tolerant landscaping and a five-foot deep water detention basin to capture stormwater run-off. The detention basin will be located between the commercial and residential buildings and will be surrounded by a five-foot tall tubular steel fence atop a 6.5-foot retaining wall installed for safety purposes. The project will also implement Conservation Element policies related to energy efficiency and energy saving technology by installing a total of 64 residential electrical vehicle charging stations and one for the commercial area.

In addition, the project complies with the General Plan policies that strive for balanced communities and provide for a variety of housing types and sizes with varying levels of affordability in residential and village developments and different types of land uses within a community to offer a diverse mix of uses. The project includes affordable housing opportunities consistent with the policies in the General Plan and the City's Housing Element, including:

- Providing affordable housing throughout the City so that no single area experiences a disproportionate concentration. (LU-H.2)
- Maintaining or increasing the City's supply of land designated for various residential densities as community plans are being prepared, updated, or amended. (LU-C.3)
- Seek attainment of community balance with respect to utilization of affordable housing resources. (HE-1.1)
- Encourage location of affordable housing opportunities throughout all areas of the City by encouraging mixed-income development. (HE-1.8)

Amending the Community Plan to the Community Commercial – Residential Permitted land use designation provides a designation that is consistent with the policies in the Land Use Element, including:

- Integrating a variety of housing types within village and residentially designated areas with multi-modal access from the villages to the employment centers in the eastern portion of Otay Mesa. (2.2-2)
- Include in all residential developments housing units that are sized to meet the household family sizes anticipated in Otay Mesa. (2.2-3)

- Developing housing at different density ranges to provide housing affordable to all income levels. (2.2-5)
- Promote affordable housing development through the provision of a variety of housing types, including flats, townhomes, smaller-lot single-family homes, and other types of housing that are affordable in nature. (2.2-6)

As previously mentioned, the project requires a rezone from the CC-2-3 Zone (Commercial Community) to the CC-3-6 Zone (Commercial Community). The project was designed to comply with the CC-3-6 Zone requirements for density (1000 square feet/dwelling unit; 430 units proposed on a site that allows 586 units), height (varies up to 47 feet) that is below the 65-foot height limit, and floor area ratio (.75) that does not exceed the maximum requirement (2.3). Staff has also reviewed and approved deviations from the SDMC requirement for front, side, and minimum street frontage setbacks and has determined that the deviations do not adversely impact the project site or surrounding land uses.

The project supports a land use that is consistent with the Community Plan and General Plan, including policies that strive for balanced communities, promotes mobility options, and implements conservation policies related to energy efficiency and energy saving technology. The project will also provide market rate and affordable housing with varying price points, including residential and commercial uses in close proximity to transit and employment opportunities. Therefore, the project will not adversely affect the applicable land use plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The entire 13.44-acre site was graded in 2020 except for a 0.01-acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area (MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA.

The project site is in an area served by existing public services and utilities. Staff has reviewed and accepted a preliminary geotechnical report prepared for the site that concluded that the project adequately addresses the site's soil and geologic conditions, and drainage for the project complies with the City's drainage regulations and standards.

The project permit also contains specific requirements to ensure compliance with the regulations of the Land Development Code, including those adopted to protect the public health, safety and welfare. Permit requirements includes securing a valid Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration; granting an avigation easement to the City for the purposes of aircraft operations, noise and other effects caused by the operation of aircraft; requiring a geotechnical report to address the construction plans; construction of a City standard ramps, driveways, sidewalks, curbs and gutters for the project; obtaining an Encroachment Maintenance Removal Agreement for landscaping and private improvements adjacent to the site; implementing storm water construction best management practices (BMPs), including a Maintenance Agreement for ongoing permanent BMP maintenance; obtaining a Hold

Harmless Agreement for the public storm drain connecting to a private storm drain; maintenance of all landscape improvements; compliance with the City's ESL regulations and MHPA land use adjacency guidelines; ensuring no temporary or permanent construction impacts adjacent to the open space; widening Emerald Crest Court between Otay Mesa Road and the southern property boundary with a 60-foot curb to curb in an 80-foot ROW as a four lane undivided roadway; constructing the south leg at the existing signalized intersection of Corporate Center Drive and Otay Mesa Road as a three lane undivided roadway and associated improvements (i.e., traffic signal modification, restriping, etc.); removal of the existing K-Rail and fence along Otay Mesa Road between Emerald Crest Court and Corporate Center Drive and replacement with a raised median; maintenance of transportation amenities; installing appropriate private back flow prevention devices on each water service; constructing all public water facilities per the City's water design regulations and standards; all private water and sewer facilities shall be designed to comply with the requirements of the California Uniform Plumbing Code; and granting a water easement for the above ground water meters and public water main, as shown on the Exhibit A. 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, including any allowable deviations pursuant to the Land Development Code.** The project requires a rezone from the CC-2-3 Zone (Commercial Community) to the CC-3-6 Zone (Commercial Community). The project was designed to comply with the CC-3-6 Zone requirements for density (1000 square feet/dwelling unit; 430 units proposed on a site that allows 586 units), height (varies up to 47 feet) that is below the 65-foot height limit, and floor area ratio (.75) that does not exceed the maximum requirement (2.3). Staff has reviewed and approved the following deviations for setbacks:

Municipal Code Regulation	SDMC Language	Required	Proposed Deviation
Table 131.05E	Minimum Street Frontage	25 feet	The proposed Lot 5 has zero street frontage
Table 131.05E	Front Setback Requirement	Maximum of 10 feet	Proposed set back is 30 feet 5 inches along Emerald Crest Court and 182 feet 10 inches along Corporate Centre Drive
Table 131.05E	Street Side Setback	Maximum of 10 feet along Otay Mesa Road	Proposed set back is 38 feet 9 inches along Otay Mesa Road

The front setback development regulation in SDMC Table 131- 05E requires a front setback of a maximum of 10 feet. The project includes a setback of 30 feet 5 inches along Emerald Crest Court and a setback of 182 feet 10 inches along Corporate Centre Drive. In addition, the side setback development regulations in SDMC Table 131-05E requires a side setback of a maximum of 10 feet. The project includes a setback of 38 feet 9 inches along Otay Mesa Road. The front and side setback deviations allow for the buildings to be configured on the

site to allow adequate vehicular access and landscaping, and to comply with the City's storm water requirements.

The project also includes a deviation to allow Lot 5 to be developed without street frontage. The proposed lot configuration requires a deviation from the minimum street frontage requirement of 25 feet for the CC-3-6 Base Zone, per SDMC Table 131-05E. The design for the lots is consistent with the CC-3-6 Zone. The deviation allows for shared access to each parcel to facilitate the orderly development of the site. Access to the site will be implemented through a shared-access agreement that will be recorded against each parcel. Therefore, proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

2. **Site Development Permit Supplemental Findings - Environmentally Sensitive Lands.**

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.** The entire 13.44-acre site was graded in 2020 except for a 0.01-acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area (MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA. The project site does not contain any vernal pools and is not within the City's Vernal Pool Habitat Conservation Plan area.

The project site is in an area served by existing public services and utilities. Staff has reviewed and accepted a preliminary geotechnical report prepared for the site that concluded that the project adequately addresses the site's soil and geologic conditions, and drainage for the project complies with the City's drainage regulations and standards.

The project also requires a rezone from the CC-2-3 Zone (Commercial Community) to the CC-3-6 Zone (Commercial Community). The project was designed to comply with the CC-3-6 Zone requirements for density (1000 square feet/dwelling unit; 430 units proposed on a site that allows 586 units), height (varies up to 47 feet) that is below the 65-foot height limit, and floor area ratio (.75) that does not exceed the maximum requirement (2.3). Staff has also reviewed and approved deviations from the SDMC requirement for front, side, and minimum street frontage setbacks and has determined that the deviations do not adversely impact the project site or surrounding land uses.

An Addendum to the Community Plan Update Final Program Environmental Impact Report (No. 30330/304032; SCH No. 2004651076) has been prepared for the project. Staff determined that only minor technical changes or additions are necessary, and that no changes in circumstances have occurred, and no new information of substantial importance has manifested, which would result in new significant or substantially increased adverse impacts as a result of the project. The project permit also requires compliance with the City's ESL regulations and MHPA land use adjacency guidelines. Therefore, 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. The project site will not result in adverse impacts to geologic and erosional forces, flood hazards, or fire hazards. The entire 13.44-acre site was graded in 2020 except for a 0.01-acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area (MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA. The project site does not contain any vernal pools and is not within the City's Vernal Pool Habitat Conservation Plan area.

The project site is in an area served by existing public services and utilities. Staff has also reviewed and accepted a preliminary geotechnical report prepared for the site that concluded that the project adequately addresses the site's soil and geologic conditions, and drainage for the project complies with the City's drainage regulations and standards. Therefore, the proposed development will minimize the alteration of natural landforms 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 entire 13.44-acre site was graded in 2020 except for a 0.01 acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area (MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA. The project site does not contain any vernal pools and is not within the City's Vernal Pool Habitat Conservation Plan area.

The project site is in an area served by existing public services and utilities. Staff has also reviewed and accepted a preliminary geotechnical report prepared for the site that concluded that the project adequately addresses the site's soil and geologic conditions, and drainage for the project complies with the City's drainage regulations and standards.

An Addendum to the Community Plan Update Final Program Environmental Impact Report (No. 30330/304032; SCH No. 2004651076) has been prepared for the project. Staff determined that only minor technical changes or additions are necessary, and that no changes in circumstances have occurred, and no new information of substantial importance has manifested, which would result in new significant or substantially increased adverse impacts as a result of the project. The project permit also requires compliance with the City's ESL regulations and MHPA land use adjacency guidelines. Therefore, 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 and Vernal Pool Habitat Conservation Plan (VPHCP). The entire 13.44-acre site was graded in 2020 except for

a 0.01-acre area of Diegan coastal sage scrub located within the property just east of the Multi-Habitat Planning Area (MHPA) preserve fence, in accordance with previous approval for the Otay Mesa East project. This portion is still considered MHPA and no action to remove or revise the boundary is required for the project. The original project for the site did not identify adverse impacts to the MHPA. The project site does not contain any vernal pools and is not within the City's Vernal Pool Habitat Conservation Plan area. The project permit also requires compliance with the City's ESL regulations and MHPA land use adjacency guidelines. Therefore, the proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program Subarea Plan and Vernal Pool Habitat Conservation Plan.

e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The project site is located inland and not in close proximity to a public beach. Therefore, 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. An Addendum to the Community Plan Update Final Program Environmental Impact Report (No. 30330/304032; SCH No. 2004651076) has been prepared for the project. Staff determined that only minor technical changes or additions are necessary, and that no changes in circumstances have occurred, and no new information of substantial importance has manifested, which would result in new significant or substantially increased adverse impacts as a result of the project. The project permit also requires compliance with the City's ESL regulations and MHPA land use adjacency guidelines. 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.

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

1. Findings for all Neighborhood Development Permits:

a. The proposed development will not adversely affect the applicable land use plan. See Site Development Permit finding A.1.a.

b. The proposed development will not be detrimental to the public health, safety, and welfare. See Site Development Permit finding A.1.b.

c. The proposed development will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. See Site Development Permit finding A.1.c.

2. Supplemental Findings SDMC Section 126.0404(f) – Affordable Housing, In-Fill Projects, or Sustainable Buildings Deviation:

a. The development will materially assist in accomplishing the goal of providing affordable housing, in-fill projects, or sustainable buildings opportunities. The

project includes the development of a mixed use residential and commercial project consisting of three to four level multi-family residential buildings with 430 dwelling units that total 442,230 square feet. Of the 430 dwelling units, 52 dwelling units will be affordable to low-income households with rents at 30% of 60% of Area Median Income, 6,000 square-feet of commercial uses, and associated site improvements.

The project complies with the General Plan policies that strive for balanced communities and provide for a variety of housing types and sizes with varying levels of affordability in residential and village developments and different types of land uses within a community to offer a diverse mix of uses. The project includes affordable housing opportunities consistent with the policies in the General Plan and the City's Housing Element, including:

- Providing affordable housing throughout the City so that no single area experiences a disproportionate concentration. (LU-H.2)
- Maintaining or increasing the City's supply of land designated for various residential densities as community plans are being prepared, updated, or amended. (LU-C.3)
- Seek attainment of community balance with respect to utilization of affordable housing resources. (HE-1.1)
- Encourage location of affordable housing opportunities throughout all areas of the City by encouraging mixed-income development. (HE-1.8)
- Integrating a variety of housing types within village and residentially designated areas with multi-modal access from the villages to the employment centers in the eastern portion of Otay Mesa. (2.2-2)
- Include in all residential developments housing units that are sized to meet the household family sizes anticipated in Otay Mesa. (2.2-3)
- Developing housing at different density ranges to provide housing affordable to all income levels. (2.2-5)
- Promote affordable housing development through the provision of a variety of housing types, including flats, townhomes, smaller-lot single-family homes, and other types of housing that are affordable in nature. (2.2-6)

In addition, the design and layout of the proposed subdivision and buildings provides for optimum solar orientation that allows for future passive heating and cooling opportunities in the Otay Mesa community. The design of the residential units and adjacent commercial uses includes features that provide future passive or natural heating and cooling improvements, including side and rear setbacks that facilitate the passage of air and penetration of sunlight between buildings. The project also consists of landscaping such as canopy trees and other ornamental trees throughout the project that will mitigate heat gain and provide an attractive

landscape environment. Therefore, the development will materially assist in accomplishing the goal of providing affordable housing, in-fill projects, or sustainable buildings opportunities.

b. Any proposed deviations are appropriate for the proposed location.

Staff has reviewed and approved the following deviations for setbacks:

Municipal Code Regulation	SDMC Language	Required	Proposed Deviation
Table 131.05E	Minimum Street Frontage	25 feet	The proposed Lot 5 has zero street frontage
Table 131.05E	Front Setback Requirement	Maximum of 10 feet	Proposed set back is 30 feet 5 inches along Emerald Crest Court and 182 feet 10 inches along Corporate Centre Drive
Table 131.05E	Street Side Setback	Maximum of 10 feet along Otay Mesa Road	Proposed set back is 38 feet 9 inches along Otay Mesa Road

The front setback development regulation in SDMC Table 131- 05E requires a front setback of a maximum of 10 feet. The project includes a setback of 30 feet 5 inches along Emerald Crest Court and a setback of 182 feet 10 inches along Corporate Centre Drive. In addition, the side setback development regulations in SDMC Table 131-05E requires a side setback of a maximum of 10 feet. The project includes a setback of 38 feet 9 inches along Otay Mesa Road. The front and side setback deviations allow for the buildings to be configured on the site to allow adequate vehicular access and landscaping, and to comply with the City's storm water requirements.

The project also includes a deviation to allow Lot 5 to be developed without street frontage. The proposed lot configuration requires a deviation from the minimum street frontage requirement of 25 feet for the CC-3-6 Base Zone, per SDMC Table 131-05E. The design for the lots is consistent with the CC-3-6 Zone. The deviation allows for shared access to each parcel to facilitate the orderly development of the site. Access to the site will be implemented through a shared-access agreement that will be recorded against each parcel. Therefore, the proposed deviations are appropriate for the proposed location.

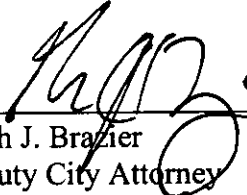
The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Site Development Permit No. 2468436 and Neighborhood Development Permit No. 2576649 are granted to BDM Investments LLC, a

California Limited Liability Company, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Noah J. Brazier
Deputy City Attorney

NJB:nja
05/02/2023
05/30/2023 Cor. Copy
Or. Dept: DSD
Doc. No. 3292117

Attachment: Site Development Permit No. 2468436/Neighborhood Development Permit
No. 2576649

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

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

INTERNAL ORDER NUMBER: 24008285

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SITE DEVELOPMENT PERMIT NO. 2468436
NEIGHBORHOOD DEVELOPMENT PERMIT NO. 2576649
BDM MIXED-USE - PROJECT NO. 673818
CITY COUNCIL**

This Site Development Permit No. 2468436 and Neighborhood Development Permit No. 2576649 is granted by the City Council of the City of San Diego to BDM Investments, LLC, a California Limited Liability Company, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0402 and 126.0502. The 13.44-acre site is located south of Otay Mesa Road, east of Emerald Crest Court, southwest of Corporate Center Drive, and north of State Route 905 (APN No. 645-410-0300 to 645-410-0900) and is in the CC-2-3 Zone within the Otay Mesa Community Plan area. The project site is legally described as: Lots 1, 2, 3, 4, 5, A, B, and C of Handler Commercial, in the City of San Diego, County of San Diego, State of California, according to Map thereof of No. 16340, filed in the Office of the of the County Recorder of San Diego County, May 7, 2019, as File No. 2019-7000180 of Official Records.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for the development of a mixed use residential and commercial project described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated June 6, 2023, on file in the Office of the City Clerk's Office.

The project shall include:

- a. Development of a mixed use residential and commercial project consisting of three to four level multi-family residential buildings with 430 dwelling units that total 442,230 square feet of which 52 dwelling units will be affordable to low-income households with rents at 30% of 60% of Area Median Income, 6,000 square-feet of commercial uses, and associated improvements;
- b. Deviations:
 - I. A deviation from SDMC Section 131.0531, Table 131.05E allowing a reduction in the minimum street frontage requirement to zero feet where 25 feet is required;

- II. A deviation from SDMC Section 131.0531, Table 131.05E allowing an increase in the maximum setback to 182 feet 10 inches where 10 feet is required along Corporate Center Drive;
 - III. A deviation from SDMC Section 131.0531, Table 131.05E allowing an increase in the maximum setback to 30 feet 5 inches where 10 feet is required along Emerald Crest Court;
 - IV. A deviation from SDMC Section 131.0531, Table 131.05E allowing an increase in the maximum setback to 38 feet 9 inches where 10 feet is required along Otay Mesa Road; and
- c. 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 June 20, 2026.
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 [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 Addendum No. 673818 to Program Environmental Impact Report No. 30330/304032; SCH No. 2004651076, 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 Addendum No. 673818 to Program Environmental Impact Report No. 30330/304032; SCH No. 2004651076, 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 the satisfaction of the City Engineer. All mitigation measures described in the **MMRP** shall be implemented for the following issue areas:

- Historical
- Paleontological Resources

CLIMATE ACTION PLAN REQUIREMENTS:

15. Owner/Permittee shall comply with the Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements" and shall be enforced and implemented to the satisfaction of the Development Services Department.

AFFORDABLE HOUSING REQUIREMENTS:

16. Prior to issuance of the first residential building permit associated with this Project, the Owner/Permittee shall demonstrate compliance with the provisions of the Inclusionary Affordable Housing Regulations of San Diego Municipal Code Chapter 14, Article 2, Division 13 and the Inclusionary Housing Procedures Manual. The Owner/Permittee shall enter into a written Agreement with the San Diego Housing Commission which shall be drafted and approved by the San Diego Housing Commission, executed by the Owner/Permittee, and secured by a deed of trust which incorporates applicable affordability conditions consistent with the San Diego Municipal Code. The Agreement will specify that in exchange for the City's approval of

the Project, the Owner/Permittee shall provide 52 affordable units with rents of no more than 30% of 60% of Area Median Income for no fewer than 55 years.

17. The residents to the affordable housing component of the project shall have full access to the amenities located within the market rate residential component for the life of the project.

AIRPORT REQUIREMENTS:

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

19. Prior to the issuance of any building permits, the Owner/Permittee shall grant an aviation easement to the City of San Diego as the operator of Brown Field Municipal Airport for the purposes of aircraft operations, noise and other effects caused by the operation of aircraft, and for structure height if the same would interfere with the intended use of the easement. The Owner/Permittee shall use the aviation easement form provided by the City of San Diego.

GEOLOGY REQUIREMENTS:

20. Prior to the issuance of any construction permits (either grading or building), the Owner/Permittee shall submit a geotechnical investigation report or updated letter prepared in accordance with the City's "Guidelines for Geotechnical Reports" 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.

21. 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.

ENGINEERING REQUIREMENTS:

22. The Site Development Permit and Neighborhood Development Permit shall comply with all conditions of the Vesting Tentative Map No. 2468440.

23. 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 the southeast corner of Otay Mesa Road and Emerald Crest Court, satisfactory to the City Engineer.

24. 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 the southeast corner of Otay Mesa Road and Private Drive G, satisfactory to the City Engineer.

25. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond, the construction of City Standard curb ramp at the southwest corner of Otay Mesa Road and Private Drive G, satisfactory to the City Engineer.
26. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond, the construction of half width AC pavement per City Standard, adjacent to the site along Emerald Crest Court, satisfactory to the City Engineer.
27. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond, the construction of two (2) 25 feet wide driveways per City Standard, adjacent to the site on Emerald Crest Court, satisfactory to the City Engineer.
28. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond, the construction of a five-foot-wide sidewalk per City Standard, adjacent to the site along Emerald Crest Court, satisfactory to the City Engineer.
29. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond, the construction of a six-foot-wide sidewalk per City Standard, adjacent to the site along Otay Mesa Road, satisfactory to the City Engineer.
30. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement for landscape and irrigation and private connections to public storm drain systems, adjacent to the site along Otay Mesa Road and Emerald Crest Court, satisfactory to the City Engineer.
31. Prior to the issuance of any building permits, the applicant shall incorporate into the construction plans or specifications, any construction Best Management Practices (BMPs) necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code.
32. Prior to the issuance of any building permits, the applicant shall submit a Technical Report that will be subject to final review and approval by the City Engineer, based on the Storm Water Standards in effect at the time of the construction permit issuance.
33. Prior to the issuance of any building permits, the applicant shall enter into a Maintenance Agreement for ongoing permanent BMP maintenance, satisfactory to the City Engineer.
34. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Agreement to Hold the City Harmless for public storm drain connecting to a private storm drain, adjacent to the site on Emerald Crest Court, satisfactory to the City Engineer.

LANDSCAPING REQUIREMENTS:

35. Prior to issuance of any grading permit, the Owner/Permittee shall submit complete construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the City of San Diego Landscape Standards, Storm Water Design Manual, 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 Development Services Department.

36. Prior to issuance of any public improvement permits, the Owner/Permittee shall submit to the Development Services Department for approval complete landscape construction documents for right-of-way improvements. Improvement plans shall show, label, and dimension a 40 square-foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed to not prohibit the placement of street trees.

37. Prior to issuance of any building permit, the Owner/Permittee shall submit to the Development Services Department for approval, complete landscape and irrigation construction documents, which are consistent with the Landscape Standards. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Development Services Department. Construction plans shall provide a 40-square-foot area around each tree that is unencumbered by hardscape and utilities unless otherwise approved per SDMC Section 142.0403(b)6.

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

39. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements as shown on the approved plans, including in the right-of-way, unless long-term maintenance of said landscaping will be the responsibility of another entity approved by the Development Services Department. All required landscaping shall be maintained consistent with the Landscape Standards in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted.

40. If any required landscaping (including existing or new plantings, hardscape, landscape features, etc.), as shown on the approved construction documents is damaged or removed, the Owner/Permittee shall repair and/or replace in kind and in an equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

MHPA LAND USE ADJACENCY REQUIREMENTS:

40. Prior to issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, the owner/permittee shall depict the following requirements on the construction documents and plans for the project site under the heading "Environmental Requirements."

- **Grading/Land Development/MHPA Boundaries** - Within or adjacent to the MHPA, all manufactured slopes associated with site development shall be included within the development footprint.
- **Drainage** - All staging and developed/paved areas must prevent the release of toxins, chemicals, petroleum products, exotic plant materials prior to release by incorporating the use of filtration devices, planted swales and/or planted detention/desiltation basins, or other approved temporary and permanent methods that are designed to minimize negative impacts, such as excessive water and toxins into the ecosystems of the MHPA.
- **Toxics/Project Staging Areas/Equipment Storage** - Projects that use chemicals or generate by-products such as pesticides, herbicides, and animal waste, and other substances that are potentially toxic or impactful to native habitats/flora/fauna (including water) shall incorporate measures to reduce impacts caused by the application and/or drainage of such materials into the MHPA. No trash, oil, parking, or other construction/development-related material/activities shall be allowed outside any approved construction limits. Provide a note in/on the CD's that states: "All construction related activity that may have potential for leakage or intrusion shall be monitored by the Qualified Biologist/Owners Representative or Resident Engineer to ensure there is no impact to the MHPA."
- **Lighting** - All lighting within or adjacent to the MHPA is directed away/shielded from the MHPA or limited to the immediate area and is in compliance with City's Outdoor Lighting Regulations per SDMC Section 142.0740.
- **Barriers** - Existing fences/walls; and/or signage along the MHPA boundaries shall remain and or be added to direct public access to appropriate locations, reduce domestic animal predation, protect wildlife in the preserve, and provide adequate noise reduction where needed.
- **Invasives** - No invasive, non-native plant species shall be introduced into areas within or adjacent to the MHPA.
- **Brush Management** - Brush management zones will not be greater in size that is currently required by the City's regulations (this includes use of approved alternative compliance). Within Zone 2 the amount of woody vegetation clearing shall not exceed 50 percent of the vegetation existing when the initial clearing is done. Vegetation clearing shall be done consistent with City standards and shall avoid/minimize impacts to covered species to the maximum extent possible. For all new development, regardless of the ownership, the brush management in the Zone 2 area will be the responsibility of a homeowner association or other private party.
- **Noise** - Construction noise that exceeds the maximum levels allowed (60 dB or greater at the beginning edge of the habitat) shall be avoided during the breeding seasons for the following: CA gnatcatcher (3/1-8/15). If construction is proposed during the breeding season for the species the following measures are required.

COASTAL CALIFORNIA GNATCATCHER (Federally Threatened)

Prior to the issuance of any grading permit, the Development Services Department shall verify that the Multi-Habitat Planning Area (MHPA) boundaries and the following project requirements regarding the coastal California gnatcatcher are shown on the construction plans:

NO CLEARING, GRUBBING, GRADING, OR OTHER CONSTRUCTION ACTIVITIES SHALL OCCUR BETWEEN MARCH 1 AND AUGUST 15, THE BREEDING SEASON OF THE COASTAL CALIFORNIA GNATCATCHER, UNTIL THE FOLLOWING REQUIREMENTS HAVE BEEN MET TO THE SATISFACTION OF THE CITY MANAGER:

- A. A QUALIFIED BIOLOGIST (POSSESSING A VALID ENDANGERED SPECIES ACT SECTION 10(a)(1)(A) RECOVERY PERMIT) SHALL SURVEY THOSE HABITAT AREAS WITHIN THE MHPA THAT WOULD BE SUBJECT TO CONSTRUCTION NOISE LEVELS EXCEEDING 60 DECIBELS [dB(A)] HOURLY AVERAGE FOR THE PRESENCE OF THE COASTAL CALIFORNIA GNATCATCHER. SURVEYS FOR THE COASTAL CALIFORNIA GNATCATCHER SHALL BE CONDUCTED PURSUANT TO THE PROTOCOL SURVEY GUIDELINES ESTABLISHED BY THE U.S. FISH AND WILDLIFE SERVICE WITHIN THE BREEDING SEASON PRIOR TO THE COMMENCEMENT OF ANY CONSTRUCTION. IF GNATCATCHERS ARE PRESENT, THEN THE FOLLOWING CONDITIONS MUST BE MET:
 - I. BETWEEN MARCH 1 AND AUGUST 15, NO CLEARING, GRUBBING, OR GRADING OF OCCUPIED GNATCATCHER HABITAT SHALL BE PERMITTED. AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; AND
 - II. BETWEEN MARCH 1 AND AUGUST 15, NO CONSTRUCTION ACTIVITIES SHALL OCCUR WITHIN ANY PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES WOULD RESULT IN NOISE LEVELS EXCEEDING 60 dB (A) HOURLY AVERAGE AT THE DGE OF OCCUPIED GNATCATCHER HABITAT. AN ANALYSIS SHOWING THAT NOISE GENERATED BY CONSTRUCTION ACTIVITIES WOULD NOT EXCEED 60 dB (A) HOURLY AVERAGE AT THE EDGE OF OCCUPIED HABITAT MUST BE COMPLETED BY A QUALIFIED ACOUSTICIAN (POSSESSING CURRENT NOISE ENGINEER LICENSE OR REGISTRATION WITH MONITORING NOISE LEVEL EXPERIENCE WITH LISTED ANIMAL SPECIES) AND APPROVED BY THE CITY MANAGER AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES. PRIOR TO THE COMMENCEMENT OF

CONSTRUCTION ACTIVITIES DURING THE BREEDING SEASON, AREAS RESTRICTED FROM SUCH ACTIVITIES SHALL BE STAKED OR FENCED UNDER THE SUPERVISION OF A QUALIFIED BIOLOGIST; OR

- III. AT LEAST TWO WEEKS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES, UNDER THE DIRECTION OF A QUALIFIED ACOUSTICIAN, NOISE ATTENUATION MEASURES (e.g., BERMS, WALLS) SHALL BE IMPLEMENTED TO ENSURE THAT NOISE LEVELS RESULTING FROM CONSTRUCTION ACTIVITIES WILL NOT EXCEED 60 dB(A) HOURLY AVERAGE AT THE EDGE OF HABITAT OCCUPIED BY THE COASTAL CALIFORNIA GNATCATCHER. CONCURRENT WITH THE COMMENCEMENT OF CONSTRUCTION ACTIVITIES AND THE CONSTRUCTION OF NECESSARY NOISE ATTENUATION FACILITIES, NOISE MONITORING* SHALL BE CONDUCTED AT THE EDGE OF THE OCCUPIED HABITAT AREA TO ENSURE THAT NOISE LEVELS DO NOT EXCEED 60 dB (A) HOURLY AVERAGE. IF THE NOISE ATTENUATION TECHNIQUES IMPLEMENTED ARE DETERMINED TO BE INADEQUATE BY THE QUALIFIED ACOUSTICIAN OR BIOLOGIST, THEN THE ASSOCIATED CONSTRUCTION ACTIVITIES SHALL CEASE UNTIL SUCH TIME THAT ADEQUATE NOISE ATTENUATION IS ACHIEVED OR UNTIL THE END OF THE BREEDING SEASON (AUGUST 16).

* Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB (A) hourly average or to the ambient noise level if it already exceeds 60 dB (A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the Development Services Department, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

- B. IF COASTAL CALIFORNIA GNATCATCHERS ARE NOT DETECTED DURING THE PROTOCOL SURVEY, THE QUALIFIED BIOLOGIST SHALL SUBMIT SUBSTANTIAL EVIDENCE TO THE DEVELOPMENT SERVICES DEPARTMENT AND APPLICABLE RESOURCE AGENCIES WHICH DEMONSTRATES WHETHER OR NOT MITIGATION MEASURES SUCH AS NOISE WALLS ARE NECESSARY BETWEEN MARCH 1 AND AUGUST 15 AS FOLLOWS:

- I. IF THIS EVIDENCE INDICATES THE POTENTIAL IS HIGH FOR COASTAL CALIFORNIA GNATCATCHER TO BE PRESENT BASED

ON HISTORICAL RECORDS OR SITE CONDITIONS, THEN
CONDITION A.III SHALL BE ADHERED TO AS SPECIFIED
ABOVE.

- II. IF THIS EVIDENCE CONCLUDES THAT NO IMPACTS TO THIS
SPECIES ARE ANTICIPATED, NO MITIGATION MEASURES
WOULD BE NECESSARY.

PARKS AND RECREATION REQUIREMENTS:

41. The Owner/Permittee shall provide regular maintenance and monitoring of the flow spreader stormwater discharge facility that outfalls onto City-fee owned open space on the east side of the property to ensure that no erosional impacts occur on the adjacent parcel.

42. If erosional impacts do occur onto adjacent City fee-owned open space, Owner/Permittee shall make adjustments to the flow spreader stormwater outfall facility to prevent further erosional impacts from occurring to the satisfaction of the Parks and Recreation Department.

43. The Owner/Permittee shall ensure that there are no temporary or permanent construction impacts to the adjacent open space.

44. The Owner/Permittee shall ensure that no invasive trees or plants are planted adjacent to open space.

45. The Owner/Permittee shall ensure that there is no overspray or irrigation runoff on adjacent open space.

46. Parks and Recreation Department shall review and approve grading plans prior to permit issuance.

47. The Owner/Permittee shall ensure that no private easements, encroachments, remedial grading or sub-surface infrastructure occur on adjacent open space.

PLANNING/DESIGN REQUIREMENTS:

48. 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.

49. 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 (City Outdoor Lighting Regulations per LDC Section 142.0740).

50. Prior to the issuance of building permit, site specific interior noise analyses demonstrating compliance with the interior noise compatibility standards of the City's General Plan. This shall include demonstrating the interior noise level of habitable residential space is 45 dBA Community Noise Equivalent Level or less. Noise control measures, including but not limited to increasing roof, wall, window, and door sound attenuation ratings, placing HVAC in noise reducing enclosures, or designing buildings so that no windows face freeways or major roadways may be used to achieve the noise compatibility standards. Exact noise measures and their effectiveness shall be determined by the site-specific exterior noise analyses.

TRANSPORTATION REQUIREMENTS

51. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. 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 appropriate City decision maker in accordance with the SDMC.

52. Prior to the issuance of any building permits, the Owner/Permittee shall dedicate 12 feet of right-of-way along the project frontage on Otay Mesa Road, per the approved Exhibit A, and assure by permit and bond the construction of a 22-foot parkway with a six-foot-wide non-contiguous sidewalk, curb, and gutter, satisfactory to the City Engineer. All improvements shall be completed and operational prior to first occupancy.

53. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond the widening of Emerald Crest Court between Otay Mesa Road and the southern property boundary with 60 feet curb to curb in an 80-foot right-of-way as a four lane undivided roadway (two northbound lanes and two southbound lanes), including a ten foot parkway with five foot wide non-contiguous sidewalk, curb, and gutter, satisfactory to the City Engineer. All improvements shall be completed and operational prior to first occupancy.

54. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond the construction of the south leg at the existing signalized intersection of Corporate Center Drive and Otay Mesa Road as a three lane undivided roadway (one northbound lane and two southbound lanes), including traffic signal modification with split phasing in the northbound and southbound direction, lead pedestrian interval for the east leg crossing, and two blank-out R3-1 (no right turn) signs facing northbound during the lead pedestrian interval. The Owner/Permittee shall also restripe the north leg to include an exclusive left turn lane, a shared thru/right lane, and an exclusive right turn lane and restripe the east leg to provide an exclusive left turn lane. In addition, the project shall widen Otay Mesa Road and construct an exclusive eastbound right-turn lane at Otay Mesa Road/Corporate Center Drive and restripe the existing Class II bicycle lane to a buffered Class II bicycle lane along Otay Mesa Road between Emerald Crest Court and Corporate Center Drive, satisfactory to the City Engineer. All improvements shall be completed and operational prior to first occupancy.

55. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond the construction of two (2) 25-foot wide driveways along the project frontage

on Emerald Crest Court per current City standards, satisfactory to the City Engineer. All improvements shall be completed and operational prior to first occupancy.

56. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond the construction of curb ramps at the southeast corner of Otay Mesa Road and Emerald Crest Court, and both southwest and southeast corner of Otay Mesa Road and Corporate Center Drive, satisfactory to the City Engineer. All improvements shall be completed and operational prior to first occupancy.

57. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond the removal of the existing K-Rail and fence along Otay Mesa Road between Emerald Crest Court and Corporate Center Drive and replacement with a raised median, satisfactory to the City Engineer. All improvements shall be completed and operational prior to first occupancy.

58. Prior to the issuance of any building permits, the Owner/Permittee shall record reciprocal access easements in favor of all parcels within the project site, satisfactory to the City Engineer.

59. Prior to issuance of any building permits, the vacation of Corporate Center Drive south of Otay Mesa Road, as shown in Exhibit A shall be recorded, satisfactory to the City Engineer.

60. Prior to the issuance of any building permit, but after the recordation of the Corporate Center Drive street vacation, the Owner/Permittee shall record an electrical easement for City traffic signal assets such as traffic signal detector loops, conduits, along Corporate Center Drive south of Otay Mesa Road, satisfactory to the City Engineer.

61. Prior to the issuance of building permits, the Owner/Permittee shall record a shared parking agreement between all affected lots within the project site, to the satisfaction of the City Engineer.

62. Prior to the issuance of a Certificate of Occupancy, the Owner/Permittee shall provide and maintain transportation amenities for the project, to include the following, as shown on Exhibit A:

- a. Transit and Rideshare Information - Install and maintain an on-site kiosk or information center with multi-modal wayfinding information and transit information. The kiosk information center shall be located in a prominent location that can easily be seen by residents entering and exiting the development.
- b. On-site Bicycle Repair Station - Install and properly maintain an on-site public bicycle repair station. The bicycle repair station must be located in a well-lit area, near the street frontage and must include, at a minimum, a bike pump, English and metric Allen wrenches, pedal wrench, headset wrench, tire levers, and screwdrivers.

- c. Co-Working Space - Provide and maintain a co-working space within the project premises available for resident use. The co-working space shall be at least 500 square feet and shall provide private or semi-private office workspaces.

WATER & SEWER DEVELOPMENT REQUIREMENTS:

63. Prior to the issuance of a Certificate of Occupancy, all public water and sewer facilities within the public right-of-way or public easement shall be complete and operational, in a manner satisfactory to the Public Utilities Department and the City Engineer.

64. Prior to the issuance of a Certificate of Occupancy, the Owner/Permittee shall have installed an appropriate permitted private backflow prevention device (BFPDs) on each water service (domestic, fire, and irrigation), in a manner satisfactory to the Public Utilities Department and the City Engineer. The BFPDs shall be located above ground on private property, in line with the service, and immediately adjacent to the public right-of-way.

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

66. Prior to the issuance of a Certificate of Occupancy, the Owner/Permittee shall grant a water easement for the proposed above ground water meters and proposed public water main as shown on the approved Exhibit "A", in a manner satisfactory to the Public Utilities Department and the City Engineer.

67. All proposed private water and sewer facilities 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.

SOLID WASTE REQUIREMENTS

68. I. Prior to Permit Issuance or Bid opening/Bid award

A. LDR Plan check

1. Prior to the issuance of any construction permit, including but is not limited to, demolition, building or any other construction permit, the Assistant Deputy Director environmental designee shall verify that all the requirements of the Refuse & Recyclable Materials Storage Regulations and all requirements of the Waste Management Plan are shown and noted on the appropriate construction documents. All requirements, notes and graphics shall be in substantial conformance with the conditions and exhibits of the associated discretionary approval.
2. The construction documents shall include a Waste Management Plan.
3. Notification shall be sent to:

MMC Environmental Review Specialist

Development Service Department
9601 Ridgehaven Court
Ste. 220, MS 1102 B
San Diego, California 92123 1636
(619) 980-7122

Environmental Services Department (ESD)
9601 Ridgehaven Court
Ste. 210, MS 1102 A
San Diego, California 92123 1636
(858) 573-1236

II. Prior to Start of Construction

A. Building Permit - Prior to issuance of any building permit, the permittee shall be responsible to arrange a preconstruction meeting to coordinate the implementation of the Waste Management Plan. The Precon Meeting shall include the Construction Manager, Building Contractor, Mitigation Monitoring Compliance (MMC), Environmental Services Department (ESD), Building Inspector (BI) and/or the Resident Engineer (RE), whichever is applicable, to verify that implementation of the Waste Management Plan will be performed in compliance with the plan approved by DSD and ESD to ensure that impacts to solid waste facilities are below a level of significance.

1. At the Precon Meeting, the Permittee shall submit reduced copies of the approved Waste Management Plan to the RE, BI, MMC, and ESD.

2. Prior to the start of construction, the Permittee/Construction Manager shall submit a construction schedule to the RE, BI, MMC, and ESD.

III. During Construction

The Permittee/Construction Manager shall call for inspections by the RE/BI and both MMC and ESD who will periodically visit the demolition/construction site to verify implementation of the Waste Management Plan. The Consultant Site Visit Record (CSVR) shall be used to document the Daily Waste Management activity/progress.

IV. Post Construction

For any demolition or construction permit, a final results report shall be submitted to both MMC and ESD for review and approval to the satisfaction of the City. MMC will coordinate the approval with ESD and issue the approval notification. ESD will review/approve City Recycling Ordinance-required educational materials prior to occupancy.

INFORMATION ONLY:

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary 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 May 23, 2023, by Resolution No. R-314933.

Site Development Permit No. 2468436
Neighborhood Development Permit No. 2576649
Date of Approval: May 23, 2023

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Xavier Del Valle
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.**

BDM Investments, LLC
Owner/Permittee

By _____
Michael H Shoemaker,
Manager

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

Passed by the Council of The City of San Diego on MAY 23 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<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"/>
Stephen Whitburn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<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"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

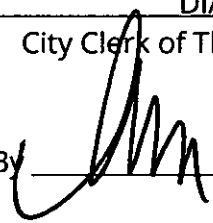
Date of final passage MAY 23 2023.

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

DIANA J. S. FUENTES
City Clerk of The City of San Diego, California.

By , Deputy

(Seal)

Office of the City Clerk, San Diego, California

314933

Resolution Number R-_____