

RESOLUTION NUMBER R- 313215

DATE OF FINAL PASSAGE SEP 15 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING PLANNED DEVELOPMENT
PERMIT NO. 2109731 AND SITE DEVELOPMENT PERMIT
NO. 2109732 FOR THE AVION PROPERTY - PROJECT
NO. 598173.

WHEREAS, The DeBevoise Family Trust dated March 21, 1986, Owner, and Lennar Homes, Permittee, filed an application with the City of San Diego for a Planned Development Permit and Site Development Permit for the subdivision of the project site and construction of 84 multi-family dwelling units on-site, the transfer of 19 affordable dwelling units and 14 market rate dwelling units to Parcel 1 of Map 21331 in the Black Mountain Ranch North Village Town Center for a combined total of 117 dwelling units known as the Avion Property project (Project). The 41.48-acre Project site is located southwest of Winecreek Drive in the AR-1-1 (Agricultural-Residential) Zone which is proposed to be rezoned to the RS-1-14 (Residential-Single Unit) Zone within the Black Mountain Ranch Subarea Plan area. In addition, the site is located within the Multiple Habitat Planning Area (MHPA), MCAS Miramar Airport Land Use Compatibility Overlay Zone, and Airport Influence Area (Review Area 2); and

WHEREAS, the Project site is legally described as: PARCEL 1: The Southeast quarter of the Southeast quarter of Section 32, Township 13 South, Range 2 West, San Bernardino Base and Meridian, in the City of San Diego, County of San Diego, State of California, except for all crude oil, petroleum, gas, brea, asphaltium, and all kindred substances and other minerals under and said land, as reserved in Deed recorded May 30, 1960 as Instrument No. 111628 of Official Records; and PARCEL 2: Lots 1 and 2 and the Southeast quarter of the Northeast quarter of Section 5, Township 14 South, Range 2 West, San Bernardino Base and Meridian, in the City of

San Diego, County of San Diego, State of California, except for all crude oil, petroleum, gas, brea, asphaltium, and all kindred substances and other minerals under and said land, as reserved in Deed recorded May 30, 1960 as Instrument No. 111628 of Official Record; and

WHEREAS, on July 23, 2020, the Planning Commission of the City of San Diego considered Planned Development Permit No. 2109731 and Site Development Permit No. 2109732, and pursuant to Resolution No. 5095-PC voted to recommend the Council of the City of San Diego (Council) approval of the Permits with recommendations; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the 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 September 15, 2020, testimony having been heard, evidence having been submitted, and the Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council, that it adopts the following findings with respect to Planned Development Permit No. 2109731 and Site Development Permit No. 2109732:

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

1. Findings for all Site Development Permits SDMC Section 126.0505(a):

a. The proposed development will not adversely affect the applicable land use plan. The Project proposes the construction of 84 multi-family residential dwelling units on a site that is designated for residential use in the Black Mountain Ranch Subarea Plan (Subarea Plan) and is part of the 1996 voter-approved phase shift for land within Black Mountain Ranch. The phase shift allowed for development to occur consistent with the land use designations and residential densities identified in the Subarea Plan. The 41.48-acre site has a Residential Land Use designation of Low Density, allowing 2-5 dwelling units per acre (du/ac). The Subarea Plan identifies the site as Parcel C within the Southeast Perimeter Properties and

allocates 117 dwelling units on the parcel. The Project includes the transfer of 19 affordable units and 14 market rate dwelling units to Parcel 1 of Map 21331 in the Black Mountain Ranch North Village Town Center, consistent with the development transfer provisions of the Subarea Plan's Implementation Element. The affordable units would be constructed as part of Fairbanks Terrace Apartments Phase II as part of its ministerial permit. These units would be developed as senior-affordable units, would match the design and unit mix of the existing Fairbanks Terrace Apartments Phase I units, and would be managed by the existing Fairbanks Terrace Apartments Phase I homeowner's association. The 14 market rate dwelling units (not age restricted) would be designed consistent with the product types of the 84 detached multi-family dwelling units to be developed on-site.

The proposed development envelope for Parcel C would be approximately 17.74-acres, approximately 5.76-acres less than the development envelope identified in the Subarea Plan. The remaining approximate 23.75-acres on-site would be preserved as Multi-Habitat Planning Area (MHPA) open space. The portion of the site designated for Open Space by the Subarea Plan (approximately 57-percent of the site) would remain open space and a component of the City's Multiple Species Conservation Program (MSCP), consistent with the goals and policies of the General Plan Conservation Element. Planned land uses adjacent to the MHPA within the Subarea Plan include single-family and multi-family residential, as well as active recreation. The Project has been designed to minimize impacts and maintain the function of the MHPA. Consistent with the City's MSCP Subarea Plan, Open Space Element of the Subarea Plan and Conservation Element of the General Plan, the Project would prevent drainage from flowing directly into the MHPA; reduce the impact of toxics, noise, and lighting; provide new barriers along the MHPA boundary; establish brush management zones; and limit access to the Black Mountain Ranch Open Space Park to deter off-trail use. The Project site plan and design guidelines conform to the MHPA land use adjacency guidelines.

The current zoning for the property is AR-1-1 (Agricultural – Residential) and the Subarea Plan envisions the zone for Low Density Residential to be RS-1-14 (Residential – Single Unit). The Project includes a zone change from AR-1-1 to the RS-1-14 zone. The proposed zoning and clustered development will minimize impacts to natural habitat and the natural landform and reduce encroachment into the City's MHPA. These efforts help implement the Open Space and Community Design Elements of the Subarea Plan.

As outlined in the Subarea Plan, all Perimeter Properties are required to adopt the Design Guidelines approved for the Black Mountain Ranch Vesting Tentative Map/Planned Residential Development or develop independent design guidelines in conformance with policies in the Community Design Element Subarea Plan. The independent design guidelines provided as a component of the Project maintain consistency with the policies of the Subarea Plan. The Design Guidelines developed for the Project will assist to implement the goals of the Community Design Element section A.4 Residential Clusters of the Subarea Plan by establishing a community identity compatible with the surrounding residential uses and open space system. The Design Guidelines also address section B. (Common Design Elements of the Community Design Element) by implementing street design standards for local streets, landscape and open space, and signage, lighting and walls. Therefore, for these reasons, the development would not adversely affect the applicable land use plan.

b. **The proposed development will not be detrimental to the public health, safety, and welfare.** The Project proposes the subdivision of the site and construction of 84 multi-family residential units on-site, the transfer of 19 affordable dwelling units and 14 market rate dwelling units to Parcel 1 of Map 21331 in the Black Mountain Ranch North Village Town Center for a combined total of 117 dwelling units. The proposed 84 multi-family units to be developed on-site would consist of four different housing product types: 20 detached 2,289-square-foot dwelling units; 20 detached 2,303-square-foot dwelling units; 22 detached 2,446-square-foot dwelling units, and 22 detached 2,479-square-foot dwelling units.

The Project would preserve approximately 23.75-acres of natural open space on-site through dedication to the City's MHPA. The on-site MHPA open space would include preservation of two open space lots (Lots A and B), which would be dedicated in fee title to the City of San Diego. Within Lots A and B to be dedicated in fee title to the City, the Project applicant would retain ownership of the 50-foot radii lots surrounding the storm drain outlets and grant them to the City through a Covenant of Easement.

The main access to the site would be provided by constructing a private drive (Private Drive A) that would connect to Winecreek Drive at the northeast corner of the site. Six interior private drives (A through G) would be constructed within the site. Private Drive A would connect to Winecreek Drive at the northeast corner of the site and provide the main access to the site. Private Drives B, C, and G would be stub streets less than 150 feet in length. Internal circulation would include stop signs at internal intersections. Emergency access would be provided via Private Drive A's connection to Winecreek Drive.

Supplemental Environmental Impact Report (SEIR) No. 598173/SCH No. 97111070, has been prepared for the Project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. A Mitigation, Monitoring and Reporting Program (MMRP) would be implemented with this Project, which would reduce some of the potential impacts to below a level of significance for Biological Resources, Cultural Resources (Historical Resources/ Archaeology), and Air Quality (Construction). Candidate Findings and Statement of Overriding Considerations have been included with the Project that allowed the decision-maker to approve the Project with significant and unmitigated direct impacts related to Visual Quality (Landform Alteration), which would be significant and unmitigated.

The San Diego Local Agency Formation Commission (LAFCO) would need to approve a reorganization consisting of an expansion of latent powers for the Olivenhain Municipal Water District (OMWD) sewer service area and the annexation of the site to OMWD and the sewer service area. Proposed sewer flows generated by the Project would be conveyed to the downstream sewer treatment plant owned and operated by the OMWD. The Project sewer mains would connect to existing sewer facilities within the Heritage Bluffs residential development to north. The agreement to have OMWD provide sewer service rather than the City of San Diego is consistent with two other adjacent projects within Black Mountain Ranch (East Clusters Unit 3 and the Heritage Bluffs residential development).

The permit for the Project includes various conditions and referenced exhibits of approval relevant to achieving compliance with the applicable regulations of the San Diego Municipal

Code (SDMC) in effect for this Project. Such conditions within the permit have been determined as necessary to avoid adverse impacts upon the health, safety and general welfare of persons residing or working in the surrounding area. The Project will comply with the development conditions in effect for the subject property as described in Planned Development Permit No. 2109731 and Site Development Permit No. 2109732, and other regulations and guidelines pertaining to the subject property per the SDMC for the site. Prior to issuance of any building permits for the proposed development, the plans will be reviewed for compliance with all Building, Electrical, Mechanical, Plumbing and Fire Code requirements, and the Owner/ Permittee will be required to obtain a grading and public improvement permit. Therefore, the proposed development would 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 proposes the subdivision of the site and construction of 84 multi-family residential units on-site, the transfer of 19 affordable dwelling units and 14 market rate dwelling units to Parcel 1 of Map 21331 in the Black Mountain Ranch North Village Town Center for a combined total of 117 dwelling units. The transfer of dwelling units is consistent with the development transfer provisions of the Subarea Plan's Implementation Element. The Project would preserve approximately 23.75-acres of natural open space on-site through dedication to the City's MHPA. The on-site MHPA open space would include preservation of two open space lots (Lots A and B), which would be dedicated in fee title to the City of San Diego.

The current zoning for the property is AR-1-1 (Agricultural – Residential) and the Subarea Plan envisions the zone for Low Density Residential to be RS-1-14 (Residential – Single Unit). The Project includes a zone change from AR-1-1 to the RS-1-14 zone. The proposed zoning and clustered development will minimize impacts to natural habitat and the natural landform and reduce encroachment into the City's MHPA.

The landscape concept plan design includes plantings to blend and complement the existing native planting surrounding the site. Native low-fuel volume species would be used to revegetate the graded slopes, and the interior of the site would feature parkway street trees and groundcover-ornamental in nature and fire resistant. Plant materials utilized in the landscape concept plan would be from the palette of plants known to perform well in this climactic zone and amended soil type.

Brush Management Zones (BMZ) would be implemented with Zone 1 located adjacent to structures. Zone 2 would consist of selective thinning and pruning of native plants. The standard BMZ widths are 35 feet for BMZ 1 and 65 feet for BMZ 2 as stated in Table 142-04h of the SDMC. The Project proposes to implement Alternative Compliance measures (SDMC Section 142.0412(i)) to traditional brush management zones that involve a reduction in BMZ 1 limits and introduction of a non-combustible wall between BMZ 1 and BMZ 2. By reducing the BMZ 1 limit and providing a non-combustible wall between BMZ 1 and BMZ 2, the overall impact to vegetation is reduced as the graded area is less. All BMZ 1 impacts are located within the grading limits. The majority of the BMZ 2 impacts are also located within the grading limits. Although 1.32-acres of BMZ 2 impacts extend into southern mixed chaparral that lies outside of

the grading limits primarily on the western side of the project area, BMZ 2 impacts are considered "impact neutral" and involve only minor thinning, trimming, and pruning of vegetation without destroying habitat value.

The Project proposes a deviation from the applicable development regulations, for over height retaining walls outside of the required setback. The Project is requesting retaining walls with a maximum height of 55 feet, 7 inches that would be located along both sides of the existing drainage channel, where SDMC Section 142.0340 requires that the heights of retaining walls not exceed 12 feet outside of required setbacks. The proposed retaining walls would be located along both sides of the existing drainage channel that would be crossed by the arch culvert allowing for the extension of Winecreek Drive. Implementation of these retaining walls would avoid encroachments into the existing drainage that would otherwise occur if the Project conformed to the maximum height allowed by the SDMC, thereby preventing impacts to sensitive wetlands. The proposed retaining walls would be downslope from the Project and not exceed the elevation of the arch culvert or the development pad and therefore, not be visible from the site once constructed. Furthermore, the retaining walls would be developed with earth tones that would blend in with the surrounding natural environment and would be landscaped with cascading vines at the top of the walls that would extend downslope to provide an aesthetically pleasing appearance from views off-site.

All other retaining walls located on the site are along both the eastern and western Project boundaries and would be 135 feet in length and vary in height from one to ten feet and would not exceed the height regulations of the underlying zone. These retaining walls would be downslope from the building pad and not visible from the site and would also be developed with earth tones that would blend in with the surrounding natural environment and would be landscaped to provide an aesthetically pleasing appearance from views off-site.

Other than the requested retaining wall height deviation, the Project meets all applicable regulations and policy documents, and is consistent with the recommended land use, design guidelines, and development standards in effect for this site per the Land Development Code (LDC). In addition, the proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities by constructing 19 affordable dwelling units off-site within the Black Mountain Ranch North Village Town Center.

2. Supplemental Findings SDMC Section 126.0505(b) – 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.** Topographically, the site is located at the upper end of a broad north-south trending valley. A ridgeline occurs in the central portion of the site that rises in elevation from north to south from 740 feet mean sea level to 915 feet mean sea level. The ridge is bounded by two small canyons, one to the east and one to the west, with one main drainage course and smaller tributaries in each. These drainages have slopes of moderate to steep grade. There is a small meadow in the northwest corner of the property, at the mouth of the eastern drainage.

Four vegetation communities and one land cover type occur on the site. Southern mixed chaparral comprises the majority of the site with lesser acreages of coastal sage scrub, non-native grassland, and freshwater marsh patches. The single land cover type occurring on the site consists of disturbed land.

Coastal sage scrub, southern mixed chaparral, non-native grassland, and freshwater marsh are all considered sensitive vegetation types by the City. Coastal sage scrub is ranked as a Tier II habitat, southern mixed chaparral as a Tier IIIA habitat, non-native grassland as a Tier IIIB habitat, and freshwater marsh as a wetland habitat. No sensitive plant species were observed on the site and none are expected to occur due to lack of appropriate habitat and/or soil conditions. Two sensitive animal species (cooper's hawk and San Diego desert woodrat) were observed on-site, while four other sensitive animal species (Belding's orange-throated whiptail, coastal whiptail, coastal California gnatcatcher, and southern California rufous-crowned sparrow) have a moderate potential to occur on the site due to the habitat conditions.

The current MHPA boundary is located within the Project site and minor encroachments into the current MHPA boundary on the eastern portion of the site would occur under the Project. These encroachments would impact a total of 0.55-acre comprised of 0.14-acre of coastal sage scrub, 0.27-acre of southern mixed chaparral, and 0.14-acre of non-native grassland. Under the MHPA boundary line adjustment (BLA), these impact areas would be removed from the current MHPA and on-site land not currently within the MHPA would be added into the preserve. Land added into the MHPA with the BLA would include 5.61-acres comprised of 4.99-acres of southern mixed chaparral, 0.49-acre of non-native grassland, and 0.13-acre of coastal sage scrub, resulting in a net gain of 5.06-acres.

The MHPA BLA was approved by the Wildlife Agencies and City MSCP on June 21, 2019. Once the BLA is completed, no direct impacts or loss of MHPA lands would result from the Project. The MHPA BLA would be beneficial to the overall MHPA preserve at this location due to an increase in Tier IIIA and IIIB habitats and acreage of preserved land. The minor losses of coastal sage scrub, southern mixed chaparral, and non-native grassland habitats from encroachments into the current MHPA total 0.55-acre and would be offset by additions of coastal sage scrub, southern mixed chaparral, and non-native grassland habitats into the MHPA currently located within the southern portion of the site totaling 5.06-acres. This proposed land exchange complies with the overall MSCP policy for BLAs, as the approved BLA would transfer equal or higher biological values of impacted species and habitats into the preserve.

The project would be consistent with the environmentally sensitive lands regulations for sensitive biological resources. It is also within the encroachment limitations permitted by the City's steep hillsides regulations. Based on the foregoing analysis and information, the site is physically suitable for the design and siting of the proposed development and the development would 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.** Topographically, the site is located at the upper end of a broad north-south trending valley. A ridgeline occurs in the central portion of the site that rises in elevation from north to south from 740 feet mean sea level to 915 feet mean sea level. The ridge is bounded by two small canyons, one to the east and one to the west, with one main drainage course and smaller tributaries in each. These drainages have slopes of moderate to steep grade. There is a small meadow in the northwest corner of the property, at the mouth of the eastern drainage.

The Project construction would grade 15.69-acres of the 41.48-acre site (37.8 percent). Overall, the Project proposes approximately 296,000 cubic yards of cut (maximum depth of 52 feet) and 296,000 cubic yards of fill (maximum depth of 64 feet) over the approximately 15.69-acre graded area, resulting in a net balance of grading on the site. The Project would therefore result in approximately 18,866 cubic yards of earthwork per graded acre. The Project would include mass grading to terrace the underlying landform in order to create flat pads for development. While the site would result in terracing within the development footprint, the Project would result in grading of the overall site area, and the majority of steep natural slopes surrounding the development would be retained within the 23.75-acres of the site (57.3 percent) proposed to be preserved as MHPA open space.

The post-Project drainage pattern has been designed to be generally consistent with the existing drainage pattern on-site and would not alter the destination of downstream flows. The Project introduces new drainage facilities consisting of culverts, brow ditches, curb gutters, storm drain inlets, and pipes that would convey flows to a new biofiltration basin to be constructed in the northeast corner of the site. The biofiltration basin would treat and detain stormwater flows before discharging them into the existing channel on the eastern side of the site.

The biofiltration basin would be needed to reduce post-Project stormwater flows. The proposed biofiltration basin includes design features that would reduce the 100-year storm runoff rate to less than or equal to the 20.6 cfs present in the existing condition. The biofiltration basin would include an aboveground storage component with a series of flow orifices that would detain stormwater and slowly release treated stormwater. Additionally, the biofiltration basin would include riprap energy dissipaters to reduce flow velocities both entering and exiting the basin. Therefore, no new significant or substantially increased adverse impacts relative to hydrology would result from implementing the Project.

The site-specific Geotechnical Report prepared for the Project concluded that no soil or geologic conditions exist at the site that would preclude the proposed development, provided the measures recommended in the report are implemented for design and construction. As outlined above in Site Development Permit finding (A)(1)(c), BMZs would be implemented with the Project which reduce potential fire hazards. Therefore, the proposed development has been designed to minimize the alteration of natural land forms and would 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.** Approximately 17.74-acres of the 41.48-acre site would be developed for residential uses and various site improvements, including private drives, hardscape, retaining walls, and landscaping. Native low-fuel volume species would be used to re-vegetate the graded slopes. The treatment for the interior would primarily be parkway street trees and groundcover, ornamental in nature, fire-resistant, and would complement the building architecture. Grading operations would entail approximately 296,000 cubic yards of cut (maximum depth of 52 feet) and 296,000 cubic yards of fill (maximum depth of 64 feet), resulting in a net balance of soils on the site. The Project would construct retaining walls with a total length of 2,038 feet and a maximum height of 55 feet, 7 inches, and would include mass grading to terrace the underlying landform in order to create flat pads for development. While the Project site would result in terracing within the development footprint, the Project would result in grading of the overall site area, and the majority of steep natural slopes surrounding the development would be retained within the 23.75-acres of the site (57.3 percent) proposed to be preserved as MHPA open space.

As outlined in Site Development Permit Finding (A)(1)(c) listed above, BMZs would be implemented with the Project which reduce potential fire hazards. As outlined in Site Development Permit Finding (A)(2)(a) listed above, the Project includes a MHPA BLA and on-site land not currently within the MHPA would be added into the preserve. Land added into the MHPA with the BLA would include 5.61-acres comprised of 4.99-acres of southern mixed chaparral, 0.49-acre of non-native grassland, and 0.13-acre of coastal sage scrub, resulting in a net gain of 5.06-acres.

The MHPA BLA was approved by the Wildlife Agencies and City MSCP on June 21, 2019. Once the boundary line adjustment is completed, no direct impacts or loss of MHPA lands would result from the Project. The MHPA BLA would be beneficial to the overall MHPA preserve at this location due to an increase in Tier IIIA and IIIB habitats and acreage of preserved land. The minor losses of coastal sage scrub, southern mixed chaparral, and non-native grassland habitats from encroachments into the current MHPA total 0.55-acre and would be offset by additions of coastal sage scrub, southern mixed chaparral, and non-native grassland habitats into the MHPA.

The Project would be consistent with the requirements of the Environmentally Sensitive Regulations as well as the Biology Guidelines. The Project would not conflict with any applicable habitat conservation plan or natural community conservation plan. Therefore, the proposed development would not conflict with the City's MSCP, in that the site is located within and adjacent to the MHPA.

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).** As outlined above in Site Development Permit Finding (A)(2)(a) listed above, the Project includes a MHPA BLA and on-site land not currently within the MHPA would be added into the preserve. Land added into the MHPA with the BLA would include 5.61-acres comprised of 4.99-acres of southern mixed chaparral, 0.49-acre of non-native grassland, and 0.13-acre of coastal sage scrub, resulting in a net gain of 5.06-acres.

The MHPA BLA was approved by the Wildlife Agencies and City MSCP on June 21, 2019. Once the boundary line adjustment is completed, no direct impacts or loss of MHPA lands would result from the Project. The MHPA BLA would be beneficial to the overall MHPA preserve at this location due to an increase in Tier IIIA and IIIB habitats and acreage of preserved land. The minor losses of coastal sage scrub, southern mixed chaparral, and non-native grassland habitats from encroachments into the current MHPA total 0.55-acre and would be offset by additions of coastal sage scrub, southern mixed chaparral, and non-native grassland habitats into the MHPA.

The site does not contain any vernal pools and not subject to the Vernal Pool Habitat Conservation Plan (VPHCP). Therefore, the proposed development would be consistent with the City of San Diego's MSCP Subarea Plan.

e. **The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.** The 41.48-acre vacant site is located southwest of Winecreek Drive. The site is located approximately 9.81-miles from the Pacific Ocean and would 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.** SEIR No. 598173/SCH No. 97111070, has been prepared for the Project in accordance with CEQA Guidelines. A MMRP would be implemented with this Project, which would reduce some of the potential impacts to below a level of significance for Biological Resources, Cultural Resources (Historical Resources/Archaeology), and Air Quality (Construction). Candidate Findings and Statement of Overriding Considerations have been included with the Project that allowed the decision-maker to approve the Project with significant and unmitigated direct impacts related to Visual Quality (Landform Alteration), which would be significant and unmitigated.

B. PLANNED DEVELOPMENT PERMIT - SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0605

1. Findings for all Planned Development Permits SDMC Section 126.0605(a):

a. **The proposed development will not adversely affect the applicable land use plan.** As outlined in Site Development Permit Finding (A)(1)(a) listed above, the Project is consistent with the goals, objectives, and proposals of the Subarea Plan and the General Plan. Therefore, the proposed development will not adversely affect the applicable land use plan.

b. **The proposed development will not be detrimental to the public health, safety, and welfare.** As outlined in Site Development Permit Finding (A)(1)(b) listed above, the permit for the Project includes various conditions and referenced exhibits of approval relevant to achieving compliance with the applicable regulations of the SDMC in effect for this Project. Such conditions within the permit have been determined as necessary to avoid adverse

impacts upon the health, safety and general welfare of persons residing or working in the surrounding area.

c. **The proposed development will comply with the regulations of the Land Development Code including any proposed deviations pursuant to Section 126.0602(b)(1) that are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone; and any allowable deviations that are otherwise authorized pursuant to the Land Development Code.** As outlined in Site Development Permit Finding (A)(1)(c) listed above, the Project includes a deviation for over height retaining walls outside of the required setback. The requested deviation has been reviewed as it relates to the proposed design of the Project, the property configuration, and the surrounding development. The deviation is appropriate and will result in a more desirable Project that efficiently utilizes the site and would avoid encroachments into the existing drainage that would otherwise occur if the Project conformed to the maximum height allowed by the SDMC, thereby preventing impacts to sensitive wetlands.

2. **Supplemental Findings SDMC Section 126.0605(c) – Off-Site Affordable Dwelling Units:**

a. **The location of the off-site affordable dwelling units will provide comparable or superior access to transit. Factors to be considered include, but are not limited to, the number, frequency, and destination of transit routes within one-half mile of the development.** The Project would include the transfer of 19 affordable dwelling units and 14 market rate dwelling units to Parcel 1 of Parcel Map 21331 in the Black Mountain Ranch North Village Town Center. The transfer receiving site encompasses approximately 1.7 acres and is currently designated Mixed-Use Core (25-45 dwelling units per acre) and zoned CC-3-5 (Community Commercial). The affordable units would be constructed as part of Fairbanks Terrace Apartments Phase II as part of its ministerial permit. These units would be developed as senior-affordable units, would match the design and unit mix of the existing Fairbanks Terrace Apartments Phase I units, and would be managed by the existing Fairbanks Terrace Apartments Phase I homeowner's association. The 14 market rate dwelling units would not be age restricted.

The receiving site is currently a vacant graded pad and the surrounding streets are fully improved with utilities to the site. The site is generally bordered by Paseo Del Sur to the west, Templeton Street to the north, and Zaslavsky Place to the east. Surrounding uses include the Target commercial center (171,500 square feet) to the west, the Sprouts grocery store (38,500 square feet) to the north, the Design39 Campus (K-8 school) to the east, and an age restricted affordable housing development to the south. The Project's affordable units are intended to supplement the affordable housing to the south and facilitate ongoing resident programs and management.

The receiving site will provide access to transit since it would be located within the Black Mountain Ranch North Village Town Center. It is located in an area where a mix of residential, office, and retail uses are provided. Pursuant to the Black Mountain Ranch Subarea Plan, an existing transit center is included within this Mixed-Use Core. In addition, the site is

approximately three miles from the existing Rancho Bernardo Transit Center which provides connections to MTS routes 20, 235, 237, 290, and 945.

b. The location of the off-site affordable dwelling units will provide comparable or superior access to employment opportunities. Factors to be considered include, but are not limited to, distances and transit availability to regional centers, subregional employment areas and industrial areas. The off-site affordable dwelling units and market rate dwelling units will provide superior access to employment opportunities due to the units being located within a Mixed-Use Core where they are within walking distance of a variety of uses including a Target store, Sprouts grocery store, two nearby schools, and a gym. It is also surrounded by restaurants and personal services. The affordable units would be constructed as part of Fairbanks Terrace Apartments Phase II as part of their ministerial permit. These units would be developed as senior-affordable units, would match the design and unit mix of the existing Fairbanks Terrace Apartments Phase I units, and would be managed by the existing Fairbanks Terrace Apartments Phase I homeowner association. The 14 market rate dwelling units would not be age restricted.

Pursuant to the Black Mountain Ranch Subarea Plan, an existing transit center is included within this Mixed-Use Core. In addition, the site is less than a mile from the 4S Commons Town Center north of Camino Del Norte where more commercial uses are located including a few banks, a Ralphs Grocery Store, Jimbo's Naturally, Ace Hardware, Karl Strauss Brewing, salon services, restaurants, and fitness uses. Adjacent to the Town Center is the ActivCare at 4S Ranch memory care community. Within one to three miles east of the transfer project site south of Bernardo Center Road, there are additional employment opportunities including, but not limited to: the Jeromes Corporate Headquarters, the industrial equipment supplier Cymer, the Petco Headquarters, Northrop Grumman, and the software company Teradata. In addition, the site is approximately three miles from the existing Rancho Bernardo Transit Center which provides connections to MTS routes 20, 235, 237, 290, and 945.

c. For non-age restricted development, the location of the off-site affordable dwelling units will provide comparable or superior access to schools. Factors to be considered include, but are not limited to, the number of schools, the educational levels of the schools, whether the schools are private or public, whether the schools are vocational, and the travelling distances between the schools and the development. The off-site affordable dwelling units would be developed as senior-affordable units (age restricted development) and the 14 market rate dwelling units (not age restricted development) will provide access to employment opportunities due to the units being located within a Mixed-Use Core where they are within walking distance of a variety of uses. The receiving site is located within the attendance boundaries of the following public schools: Del Sur Elementary, Oak Valley Middle, and Del Norte High in the Poway Unified School District. Del Sur Elementary (TK-5) is located approximately one mile west of the site, Oak Valley Middle (6-8) is located approximately two miles south of the site, and Del Norte High (9-12) is located less than a half-mile south of the site.

Design39Campus (D39C), located immediately adjacent to the site, is a campus of optional enrollment for participating Mello Roos Districts (commonly referred to as Community Facilities

Districts or "CFDs") within the Poway Unified School District. Families living within participating CFDs (4, 6, 8, 12, 13, 14 and 15) may choose to attend their neighborhood school or have the opportunity to participate in the selection process for one of the limited seats at D39C.

d. The off-site affordable dwelling units are located in a census tract with an average income level that is no more than 5% lower than the census tract of the development. The proposed development is located in Census Tract 170.33 which has a median household income of \$130,000 per the U.S. Census 2012-2016 American Community Survey five-year estimates. The receiving site is located in Census Tract 170.3, which has a median household income of \$125,430 per the U.S. Census 2012-2016 American Community Survey five-year estimates. This is approximately 3.5-percent lower than the census tract for the proposed development and; therefore, complies with the permissible average income level range.

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 Planned Development Permit No. 2109731 and Site Development Permit No. 2109732 is granted to The DeBevoise Family Trust dated March 21, 1986, Owner, and Lennar Homes, 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 /s/ Lindsey H. Sebastian
Lindsey H. Sebastian
Deputy City Attorney

LHS:als
08/24/2020
Or.Dept:DSD
Doc. No.: 2438185

Attachment: Planned Development Permit No. 2109731 and Site Development Permit No. 2109732

**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: 24007539 SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Planned Development Permit No. 2109731
Site Development Permit No. 2109732
AVION PROPERTY PROJECT NO. 598173 [MMRP]
City Council**

This Planned Development Permit No. 2109731 and Site Development Permit No. 2109732 is granted by the Council of the City of San Diego to The DeBevoise Family Trust dated March 21, 1986, Owner, and Lennar Homes, Permittee, pursuant to San Diego Municipal Code (SDMC) Sections 126.0505 and 126.0605. The 41.48-acre site is located southwest of Winecreek Drive in the AR-1-1 (Agricultural – Residential) Zone which is proposed to be rezoned to the RS-1-14 (Residential-Single Unit) Zone within the Black Mountain Ranch Subarea Plan area. In addition, the site is located within the Multiple Habitat Planning Area (MHPA), MCAS Miramar Airport Land Use Compatibility Overlay Zone, and Airport Influence Area (Review Area 2). The project site is legally described as: PARCEL 1: The Southeast quarter of the Southeast quarter of Section 32, Township 13 South, Range 2 West, San Bernardino Base and Meridian, in the City of San Diego, County of San Diego, State of California, except for all crude oil, petroleum, gas, brea, asphaltium, and all kindred substances and other minerals under and said land, as reserved in Deed recorded May 30, 1960 as Instrument No. 111628 of Official Records; and PARCEL 2: Lots 1 and 2 and the Southeast quarter of the Northeast quarter of Section 5, Township 14 South, Range 2 West, San Bernardino Base and Meridian, in the City of San Diego, County of San Diego, State of California, except for all crude oil, petroleum, gas, brea, asphaltium, and all kindred substances and other minerals under and said land, as reserved in Deed recorded May 30, 1960 as Instrument No. 111628 of Official Record.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to subdivide the property and develop a combined total of 117 dwelling units; described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 15, 2020, on file in the Development Services Department.

The project shall include:

- a. The subdivision of the project site and construction of 84 multi-family residential units on-site, and the transfer of 19 affordable dwelling units and 14 market rate

dwelling units to Parcel 1 of Map 21331 in the Black Mountain Ranch North Village Town Center for a combined total of 117 dwelling units;

- b. A Multiple Habitat Planning Area (MHPA) boundary line adjustment;
- c. A reorganization consisting of an expansion of latent powers for the Olivenhain Municipal Water District (OMWD) sewer service area and the annexation of the project site to OMWD and the sewer service area;
- d. A deviation to SDMC Section 142.0340 to allow for a retaining wall with a maximum height of 55 feet 7 inches, where a maximum height of 12 feet outside of required setbacks is allowed;
- e. Landscaping (planting, irrigation and landscape related improvements);
- f. Off-street parking; and
- g. 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 September 15, 2023.

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. 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.

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.

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

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

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 ENVIRONMENTAL IMPACT REPORT PROJECT NO. 598173/SCH NO. 97111070, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the MMRP as specified in ENVIRONMENTAL IMPACT REPORT PROJECT NO. 598173/SCH NO. 97111070, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

Biological Resources
Cultural Resources (Historical Resources/Archaeology)
Visual Quality (Landform Alteration)
Air Quality (Construction)

WASTE MANAGEMENT PLAN REQUIREMENTS:

15. The Owner/Permittee shall comply with the Waste Management Plan dated April 23, 2019 and shall be enforced and implemented to the satisfaction of the Environmental Services Department.

AFFORDABLE HOUSING REQUIREMENTS:

16. The Owner/Permittee shall comply with the affordable housing requirements of the Black Mountain Ranch Subarea Plan, which require that the project provide twenty percent (20%) of the pre-density bonus units as affordable ("Affordable Housing Requirements"). Owner/Permittee shall assure the construction and occupancy of nineteen (19) affordable dwelling units ("Offsite Affordable Units"), which nineteen (19) Offsite Affordable Units shall be transferred to and constructed on Parcel 1 of Parcel Map 21331 in the Black Mountain Ranch North Village. The nineteen (19) Offsite Affordable Units satisfy the Affordable Housing Requirements for the eighty-four (84) market rate dwelling units to be constructed on the Owner/Permittee's Black Mountain Ranch Lot 1, plus the fourteen (14) market rate dwelling units to be constructed on the Owner/Permittee's to Parcel 1 of Map 21331 in the Black Mountain Ranch North Village Town Center (collectively, the "Market Rate Units"). Prior to issuance of the first residential building permit for any of the ninety-eight (98) Market Rate Units, the Owner/Permittee shall comply with the requirements of this Section.

17. To assure the construction and occupancy of the nineteen (19) Offsite Affordable Units, Owner/Permittee shall execute an agreement ("Affordable Housing Agreement"), subject to the approval of the President and CEO of the San Diego Housing Commission, or her/his designee, addressing the following issues. The Affordable Housing Agreement shall be recorded against the sites of the Market Rate Units senior to all monetary liens. The Affordable Housing Agreement shall include all of the provisions of this Section and such other and further conditions as shall be required by the President and CEO of the San Diego Housing Commission to assure satisfaction of the Affordable Housing Requirements.

- (1) Performance security for the construction of the nineteen (19) Offsite Affordable Units, in the form of bond(s), letter(s) of credit, lien(s) and/or other forms of security acceptable to the President and CEO of the San Diego Housing Commission, or her/his designee;
- (2) The timing of the construction and occupancy of the Offsite Affordable Units, acceptable to the President and CEO of the San Diego Housing Commission, or her/his designee, shall be included in the Affordable Housing Agreement, provided that such timing shall be comply with the following:

- (A) Issuance of building permits for the nineteen (19) Offsite Affordable Units shall occur on or before the earlier of: (i) the issuance of building permits for construction of the 43rd Market Rate Unit; or (ii) eighteen (18) months after the issuance of the first residential building permit for the Market Rate Units.
 - (B) Completion of construction of the nineteen (19) Offsite Affordable Units shall occur upon the earlier of: (i) eighteen (18) months after the issuance of building permits for any of the nineteen (19) Onsite Affordable Units; or (ii) the date which is eighteen (18) months after issuance of the first residential building permit for the Market Rate Units.
 - (C) Occupancy of the nineteen (19) Offsite Affordable Units shall occur not later than ninety (90) days after the completion of construction of the nineteen (19) Offsite Affordable Units.
- (3) For "good cause" shown to the satisfaction of the President and CEO of the San Diego Housing Commission, or her/his designee, the thresholds and dates referenced herein may be adjusted and/or extended one or more times. Good cause shall include, but not be limited to, Acts of God, labor strikes, war, riots, etc., as shall be determined by the President and CEO of the San Diego Housing Commission, or her/his designee, in her/his sole discretion.

18. The Owner/Permittee shall execute and record a declaration of covenants, conditions and restrictions ("Declaration") in first lien priority position against Parcel 1 of Parcel Map 21331 in the Black Mountain Ranch North Village, restricting the occupancy and affordability of the nineteen (19) Offsite Affordable Units for a period of fifty-five (55) years from the date of issuance of a certificate of occupancy. All of the nineteen (19) Offsite Affordable Units shall be occupied by families earning no more than sixty five percent (65%) of the Area Median Income, as adjusted for family size and utilities, with rental rates that do not exceed thirty percent (30%) of sixty percent (60%) of the Area Median Income, as adjusted for assumed family size and utilities. Area Median Income shall mean the area median income defined by the United States Department of Housing and Urban Development ("HUD") as the then current area median income for the San Diego-Carlsbad Metropolitan Statistical Area, established periodically by HUD and published in the Federal Register, as adjusted for family size. The Declaration shall provide for the siting, mix and architecture nature of the nineteen (19) Offsite Affordable Units.

19. The Owner/Permittee shall execute and record a deed of trust against Parcel 1 of Parcel Map 21331 in the Black Mountain Ranch North Village, assuring the timely performance of the Declaration and the Affordable Housing Agreement. The deed of trust in favor of the San Diego Housing Commission may be subordinated to construction deed(s) of trust and/or permanent financing deed(s) of trust in favor of institutional lenders, as approved by the President and CEO of the San Diego Housing Commission, or her/his designee, in her/his sole discretion, if deemed essential to construction and/or operation of the nineteen (19) Offsite Affordable Units, upon such terms and conditions as she/he may impose.

20. The Owner/Permittee shall enter into and execute such other and further documents as the President and CEO of the San Diego Housing Commission, or her/his designee, shall require, from time to time, as may be needed to effectuate the Affordable Housing Requirements.

AIRPORT REQUIREMENTS:

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

GEOLOGY REQUIREMENTS:

22. Prior to the issuance of any construction permits (either grading or building permit), the Owner/Permittee shall submit a geotechnical investigation report prepared in accordance with the City's "Guidelines for Geotechnical Reports" that specifically addressed the proposed construction plans. The geotechnical investigation report shall be reviewed for adequacy by the Geology Section of Development Services prior to the issuance of any construction permit.

ENGINEERING REQUIREMENTS:

23. This Planned Development Permit No. 2109731 and Site Development Permit No. 2109732 shall comply with all Conditions of the Final Map for the Vesting Tentative Map No. 2109728.

24. The project proposes to export no material from the project site. Any excavated material that is exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2015 edition and Regional Supplement Amendments adopted by Regional Standards Committee.

25. The drainage system proposed for this development, as shown on the site plan, is private and subject to approval by the City Engineer.

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

27. Prior to the issuance of any building permits, the Owner/Permittee shall grant to the City of San Diego Flood Storage Easements, as shown on approved Exhibit "A," 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 current City Standard 24-foot wide driveway, adjacent to the site on Winecreek Drive, satisfactory to the City Engineer.

29. Prior to the issuance of any construction permit, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
30. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.
31. Prior to the issuance of any construction permit, 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.
32. Development of this project shall comply with all storm water construction requirements of the State Construction General Permit, Order No. 2009-0009DWQ, or subsequent order, and the Municipal Storm Water Permit, Order No. R9-2013-0001, or subsequent order. In accordance with Order No. 2009-0009DWQ, or subsequent order, a Risk Level Determination shall be calculated for the site and a Storm Water Pollution Prevention Plan (SWPPP) shall be implemented concurrently with the commencement of grading activities.
33. Prior to issuance of a grading or a construction permit, a copy of the Notice of Intent (NOI) with a valid Waste Discharge ID number (WDID#) shall be submitted to the City of San Diego as a proof of enrollment under the Construction General Permit. When ownership of the entire site or portions of the site changes prior to filing of the Notice of Termination (NOT), a revised NOI shall be submitted electronically to the State Water Resources Board in accordance with the provisions as set forth in Section II.C of Order No. 2009-0009DWQ and a copy shall be submitted to the City.

LANDSCAPE REQUIREMENTS:

34. 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, Stormwater 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.
35. Prior to issuance of any public improvement permit, the Owner/Permittee shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. 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 so as not to prohibit the placement of street trees.
36. Prior to issuance of any building permit (including shell), the Owner/Permittee shall submit complete landscape and irrigation construction documents, which are consistent with the Landscape Standards, to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan,

on file in the 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 §142.0403(b)(5).

37. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements 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 landscape 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.

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

BRUSH MANAGEMENT PROGRAM REQUIREMENTS:

39. The Owner/Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit "A," on file in the Development Services Department.

40. The Brush Management Program shall be based on standard Zone One of 35 feet in width and Zone Two of 65 feet in width, exercising the Zone One reduction option and Alternative Compliance measures set forth under SDMC §142.0412(f), §142.0412(i), and §142.0412(j). Zone One shall range from 10 feet to 35 feet in width with corresponding Zone Two of 65 feet in width, extending out from the habitable structures towards the native/naturalized vegetation as shown on Exhibit "A." Where the full brush management zones cannot be provided, openings along the brush side of the habitable structures, plus a 10-foot perpendicular return along adjacent wall faces, shall be upgraded to dual-glazed, dual-tempered panes as alternative compliance for the reduced brush management zones.

41. Radiant Heat Wall shall be 6 feet high, 1-hour fire-rated, located along the outer edge of Zone One. Upgraded openings shall be dual-glazed, dual-tempered panes, brush side of the structure plus a 10-foot perpendicular return along adjacent wall faces.

42. Prior to issuance of any grading permit, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the property in substantial conformance with Exhibit "A."

43. Prior to issuance of any Building Permits, a complete Brush Management Program shall be submitted for approval to the Development Services Department and shall be in substantial conformance with Exhibit "A," on file in the Development Services Department. The Brush Management Program shall comply with the City of San Diego's Landscape Regulations and the Landscape Standards.

44. Within Zone One, combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) shall not be permitted while accessory structures of non-combustible, one-hour fire-rated, and/or Type IV heavy timber construction may be approved within the designated Zone One area subject to Fire Marshal's approval.

45. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Standards.

MULTIPLE HABITAT PLANNING AREA (MHPA) DEDICATION/EASEMENT REQUIREMENTS:

46. Prior to recordation of the first Final Map and/or issuance of any grading permits, the on-site Multiple Habitat Planning Area (MHPA) shall be conveyed to the City's Multiple Species Conservation Program (MSCP) preserve through either fee title to the City, covenant of easement granted in favor of the City and wildlife agencies or dedication of land in fee title to the City. Lots retained under private ownership shall grant a covenant of easement (COE) prior to grading permit issuance. Lots dedicated to the City in fee shall grant a Temporary COE prior to grading permit issuance and record a MSCP Grant Deed at Final Map stage.

47. Conveyance of any land in fee to the City shall require approval from the City's Parks and Recreation Department Open Space Division Deputy Director and shall exclude detention basins or other stormwater control facilities, brush management areas, landscape/revegetation areas, and graded slopes. To facilitate MHPA conveyance, any non-fee areas shall have covenant of easements for MHPA lands placed over them if located in the MHPA and be maintained in perpetuity by the Owner/Permittee/Applicant unless otherwise agreed to by the City for acceptance of dedicated land in fee title.

MHPA LAND USE ADJACENCY REQUIREMENTS:

48. 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 Project Site.

- **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, and 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 impactive 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 Outdoor Lighting Regulations per LDC 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 home-owner's 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)
REQUIREMENTS:

49. Prior to the issuance of any grading permit, the City Manager (or appointed designee) 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 EDGE 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 City Manager, 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 CITY MANAGER 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

PARK AND RECREATION REQUIREMENTS:

50. The Owner/Permittee shall ensure that there are no temporary or permanent construction impacts to the adjacent City fee-owned open space.
51. The Owner/Permittee shall ensure that no project brush management is located on City fee-owned open space.
52. The Owner/Permittee shall ensure that no invasives are planted adjacent to City fee-owned open space.
53. The Owner/Permittee shall ensure that there is no overspray or irrigation runoff on adjacent City fee-owned property.
54. The Owner/Permittee shall ensure Park and Recreation Department review and approval of grading plans prior to permit issuance.

PLANNING/DESIGN REQUIREMENTS:

55. 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.
56. Accessory structures, including trash enclosures, shall be architecturally compatible in style and building materials with the primary buildings on the premises.
57. Accessory structures for utility, maintenance, and recreational facilities are allowed provided the facilities are limited in size, use, and capacity to serve only the needs of the occupants and guests of the development.
58. Fences or walls that are generally parallel to the public right-of-way and that exceed 100 feet in length shall be articulated with vertical elements spaced at no more than 25 feet on center. The vertical elements shall be made an integral part of the fence or wall and shall be a minimum of 12 inches wide.
59. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.
60. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS

61. The 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 authorized by the appropriate City decision maker in accordance with the SDMC.

62. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of a current City Standard 24-foot wide driveway, adjacent to the site on Winecreek Drive, satisfactory to the City Engineer.

PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:

63. Prior to any Certificate of Occupancy being issued, the Owner/Permittee is required to ensure that any and all separately titled units which share water service connections to the City's public utility systems and sewer service to the Olivenhain Municipal Water District (OMWD) are encumbered by CC&Rs written so as to ensure (to the satisfaction of the Public Utilities Director) that the operation and maintenance of all such shared water and/or sewer facilities will be provided for in perpetuity.

64. Prior to any Grading or Building Construction Permit being issued, the Owner/Permittee is required to develop (to the satisfaction of the Public Utilities Director), and record, a public water easement and (if required) a public water access easement.

65. Prior to any Building Construction Permit being issued, the Owner/Permittee shall construct, or assure construction of (via permit and bond), all required public water and sewer facilities in accordance with Exhibit "A."

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 September 15, 2020, pursuant to Resolution No. RR- 313215.

Permit Type/PTS Approval No.: Planned Development Permit No. 2109731
and Site Development Permit No. 2109732
Date of Approval: September 15, 2020

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Jeffrey A. Peterson
Development Project Manager
Development Services Department

**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.

THE DEBEVOISE FAMILY TRUST
Owner

By _____
Name:
Title:

THE DEBEVOISE FAMILY TRUST
Owner

By _____
Name:
Title:

LENNAR HOMES
Permittee

By _____
Name:
Title:

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

Passed by the Council of The City of San Diego on SEP 15 2020, 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 type="checkbox"/>	<input checked="" 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 SEP 15 2020

(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.

(Seal)

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

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 313215