RESOLUTION NUMBER R-__________

DATE OF FINAL PASSAGE ___________

ENVIRONMENTAL IMPACT REPORT NO. 91647 - CASA MIRA VIEW PROJECT.

WHEREAS, on June 14, 2006, Scripps Mesa Developers, LLC, a Limited Liability Company, submitted an application to the City of San Diego for a rezone, easement vacation, vesting tentative map and planned development permit/site development permit, for the Casa Mira View Project; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

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

WHEREAS, the issue was heard by the City Council on _________________; and

WHEREAS, the City Council considered the issues discussed in Environmental Impact Report [EIR] No.91647/SCH No 2007111095; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that EIR No. 91647/SCH No. 2007111095, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California
Code of Regulations section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a rezone, easement vacation, vesting tentative map, and planned development permit/site development permit for the Casa Mira View Project.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081 and California Code of Regulations section 15091, the City Council adopts the findings made with respect to the project, a copy of which is on file in the office of the City Clerk and incorporated herein by reference.

BE IT FURTHER RESOLVED, that pursuant to California Code of Regulations section 15093, the City Council adopts the Statement of Overriding Considerations, a copy of which is on file in the office of the City Clerk and incorporated herein by reference, with respect to the project.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference.
BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

//Submitted without signature//

By
Shirley R. Edwards
Chief Deputy City Attorney

SRE: cw: pev
10/09/08
Or. Dept: DSD
R-2009-445
MMS: #6880
EXHIBIT A
MITIGATION MONITORING AND REPORTING PROGRAM
CASA MIRA VIEW PROJECT
Rezone, Easement Vacation, Vesting Tentative Map, Planned Development Permit
and Site Development Permit
Project No. 91647

This Mitigation Monitoring and Reporting Program is designed to ensure compliance
with Public Resources Code Section 21081.6 during implementation of mitigation
measures. This program identifies at a minimum: the department responsible for the
monitoring, what is to be monitored, how the monitoring shall be accomplished, the
monitoring and reporting schedule, and completion requirements. A record of the
Mitigation Monitoring and Reporting Program will be maintained at the offices of the
Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All
mitigation measures contained in the Environmental Impact Report (Project No.
91647/SCH No 2007111095) shall be made conditions of the Rezone No. 481935,
Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned
Development Permit No. 294375 and Site Development Permit No. 294373 as may be
further described below.

As Lead Agency for the proposed project under CEQA, the City of San Diego will
administer the MMRP for the following environmental issue areas as identified in the
Casa Mira View EIR: Land Use/Multiple Species Conservation Program;
Traffic/Circulation; Air Quality; Public Facilities and Services; Noise; Paleontological
Resources and Biological Resources. The mitigation measures identified below include
all applicable measures from the Casa Mira View EIR (Project No. 91647/ SCH No.
2007111095). This MMRP shall be made a requirement of project approval.

Section 21081.6 to the State of California Public Resources Code requires a lead or
responsible agency that approves or carries out a project where an environmental impact
report (EIR) has identified significant environmental effects to adopt a "reporting or
monitoring program for adopted or required changes to mitigate or avoid significant
environmental effects." The City of San Diego is the Lead Agency for the Casa Mira
View EIR, and therefore must ensure the enforceability of the Mitigation Monitoring and
Reporting Program (MMRP). An EIR, has been prepared for this project which
addresses potential environmental impacts and, where appropriate, recommends measures
to mitigate these impacts. As such, an MMRP is required to ensure that adopted
mitigation measures are implemented.

10.1 GENERAL

Prior to issuance of a Notice to Proceed (NTC), the Assistant Deputy Director (ADD)
Environmental Designee of the Entitlements Division shall verify that the following
Mitigation Measures have been included in entirety on the submitted construction
documents and contract specifications, and included under the heading, "Environmental
Mitigation Requirements." In addition, the requirements for a Preconstruction Meeting
shall be noted on all construction documents.
Prior to the commencement of work, a Preconstruction Meeting (Pre-con) shall be conducted and include the City of San Diego’s Mitigation Monitoring Coordination (MMC) Section, Resident Engineer, Building Inspector, Project Biologist/Archaeologist/Paleontologist, Applicant and other parties of interest.

Evidence of compliance with other permitting authorities is required, if applicable. Evidence shall include either copies of permits issued, letters of resolution issued by the Responsible Agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the ADD Environmental Designee.

10.2 LAND USE

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department during construction. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

LU-1 Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of the Entitlements Division verifying that a qualified biologist has been retained to implement the biological resources mitigation program as detailed below:

A. Prior to the first pre-construction meeting, the applicant shall provide a letter of verification to the ADD of the Entitlements Division stating that a qualified Biologist, as defined in the City of San Diego Biological Resource Guidelines (BRG), has been retained to implement the revegetation plan.

B. At least thirty days prior to the pre-construction meeting, a second letter shall be submitted to the MMC section, which includes the name and contact information of the Biologist and the names of all persons involved in the Biological Monitoring of the project.

C. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall verify that any special reports, maps, plans and timelines, such as but not limited to, revegetation plans, plant relocation requirements and timing, avian or other wildlife protocol surveys, impact avoidance areas or other such information has been completed and updated.

D. The qualified biologist (project biologist) shall attend the first preconstruction meeting.

LU-2 In addition the following mitigation measures related to the MHPA Land Use Adjacency Guidelines shall be implemented:

A. Prior to initiation of any construction-related grading, the construction foreman shall discuss the sensitive nature of the adjacent habitat with the crew and subcontractor.
B. The limits of grading shall be clearly delineated by a survey crew prior to brushing, clearing or grading. The project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within and surrounding sensitive habitats as shown on the approved Exhibit A. The limits of grading shall be defined with silt fencing or orange construction fencing and checked by the biological monitor before initiation of construction grading.

C. No invasive non-native plant species shall be introduced into areas adjacent to the MHPA. Landscape plans shall not contain invasive, non-native species.

D. All lighting adjacent to the MHPA shall be shielded, unidirectional, low pressure sodium illumination (or similar) and directed away from preserve areas using appropriate placement and shields.

E. All construction activities (including staging areas and/or storage areas) shall be restricted to the development area as shown on the approved Exhibit A. No equipment maintenance shall be conducted within or near the adjacent open space and/or sensitive areas and shall be restricted to the development area as shown on the approved Exhibit A. The project biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved Exhibit A.

F. Natural drainage patterns shall be maintained as much as possible during construction. Erosion control techniques, including the use of sandbags, hay bales, and/or the installation of sediment traps, shall be used to control erosion and deter drainage during construction activities into the adjacent open space. Drainage from all development areas adjacent to the MHPA shall be directed away from the MHPA, or if not possible, must not drain directly into the MHPA, but instead into sedimentation basins, grassy swales, and/or mechanical trapping devices as specified by the City Engineer.

G. No trash, oil, parking or other construction related activities shall be allowed outside the established limits of grading. All construction related debris shall be removed off-site to an approved disposal facility.

LU-3 Should construction occur during the breeding season of the coastal California gnatcatcher (March 1 through August 15), and least Bell’s vireo (March 15 and September 15), the following mitigation measures shall be required and implemented:

A. COASTAL CALIFORNIA GNATCATCHER (Federally Threatened)- 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:

1. 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 coastal California gnatcatchers are present, then the following conditions must be met:

   a. Between March 1 and August 15, no clearing, grubbing, or grading of occupied coastal California gnatcatcher habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a Qualified Biologist; and

   b. 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 coastal California 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

   c. 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.

2. 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:

a. 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.111 shall be adhered to as specified above.

b. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

B. LEAST BELL'S VIREO (State Endangered/Federally Endangered) - Prior to the issuance of any grading permit, the City Manager (or appointed designee) shall verify that the following project requirements regarding the least Bell’s vireo are shown on the construction plans:
No clearing, grubbing, grading, or other construction activities shall occur between March 15 and September 15, the breeding season of the least Bell’s vireo, until the following requirements have been met to the satisfaction of the City Manager:

1. A Qualified Biologist (possessing a valid Endangered Species Act Section subject to construction noise levels exceeding 60 decibels [db(a)] hourly average for the presence of the least Bell’s vireo. Surveys for the least Bell’s vireo 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 the least Bell’s vireo are present, then the following conditions must be met:

   a. Between March 15 and September 15, no clearing, grubbing, or grading of occupied least Bell’s vireo habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a Qualified Biologist; and

   b. Between March 15 and September 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 least Bell’s vireo 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

   c. 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 least Bell’s vireo. 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 (September 15).

* 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.

2. If least Bell's vireo 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 15 and September 15 as follows:

a. If this evidence indicates the potential is high for least Bell's vireo to be present based on historical records or site conditions, then condition A.III shall be adhered to as specified above.

b. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

10.3 TRAFFIC AND CIRCULATION

The Casa Mira View project shall provide improvements to intersections and street segments to mitigate direct or cumulative impacts to these locations. Figure 4.2-8 shows the locations and description of the improvements to be provided by the project. The mitigation measures required by the project are discussed below.

TRAF-1 Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Mira Mesa Boulevard and Black Mountain Road. This mitigation would reduce impacts, to the
intersection Mira Mesa Boulevard and Black Mountain Road, to below a level of significance and would partially mitigate the project's significant impacts to the Mira Mesa Boulevard street segment from Westview Parkway to Black Mountain Road.

For the direct and cumulatively significant impacts along the Mira Mesa Boulevard street segment, between Westview Parkway and Black Mountain Road, unmitigable impacts would result. To fully mitigate for the project's impact, the existing road would require widening to 8 lanes from its current configuration of 7 lanes. Further widening of this segment of Mira Mesa Boulevard would require eminent domain by the City to remove existing structures along this street segment, including private commercial businesses. As such it is considered infeasible and would remain unmitigated. Implementation of mitigation measures TRAF-1 would improve the traffic conditions for street segments on Mira Mesa Boulevard; however, not to a level below significance.

**TRAF-2**  Prior to the issuance of a building permit for the second building (811th residential dwelling unit), the applicant shall assure, to the satisfaction of the City Engineer, construction of a third northbound and a third southbound thru lanes and transitions on Black Mountain Road from Mercy Road transitioning to four lanes prior to the Penasquitos Canyon Creek Bridge. This mitigation would fully mitigate the project's impacts to the intersection of Mercy Road and Black Mountain Road and partially mitigate the project's significant impacts to the Black Mountain Road (Mercy Road to Park Village Drive) street segment.

To fully mitigate for the project's significant impact along this roadway segment, a full 6-lane widening of the entire segment from Mercy Road to Park Village Drive would be required. However, because full widening would require bridge widening, elimination of the existing planted median, and relocation of a major water line, the full widening is not feasible. Therefore, the applicant shall provide feasible mitigation, that is, 6-lane widening of Black Mountain Road, for approximately 960 feet north of Mercy Road, until the existing Black Mountain Road bridge.

Approximately 290 feet of Black Mountain Road from the Penasquitos Canyon Creek Bridge to Park Village Drive would not be widened to 6-lanes and would remain unmitigated.

**TRAF-3**  Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Black Mountain Road and Hillery Drive. This mitigation would reduce impacts, to the Black Mountain Road and Hillery Drive intersection, to below a level of significance.

**TRAF-4**  Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, widening of eastbound and westbound approaches and assure an additional westbound right-turn lane at the intersection of Black Mountain Road and Gold Coast
Drive. This mitigation would reduce impacts, to the intersection of Gold Coast Drive and Black Mountain Road, to below a level of significance.

**TRAF-5** Prior to the issuance of a building permit for the first residential dwelling unit, the project applicant shall either provide a fair-share contribution of $1,572,000 towards the construction of the I-15 ‘managed lanes south segment’ project or provide a fair share contribution distributed by building and totaling $1,572,000 (in 2008 dollars) in the following manner: Prior to the issuance of a building permit for the first residential building permit, the applicant shall provide a fair-share contribution of $700,000 (in 2008 dollars). Prior to the issuance of a building permit for the second building (811th residential unit), the applicant shall provide a fair-share contribution of $700,000 (in 2008 dollars). Prior to the issuance of a building permit for the third building (1,621st residential unit), the applicant shall provide a fair-share contribution of $172,000 (in 2008 dollars) towards the construction of the I-15 ‘managed lanes south segment’ project. This contribution is to be paid subject to the satisfaction of the City Engineer. The fair-share contribution would partially mitigate the Mira Mesa Boulevard I-15 SB ramp cumulative impact and the Mira Mesa Boulevard street segment from I-15 onramps to Westview Parkway; however, there is no certain method of determining whether or not the fair-share contribution to Caltrans would actually fully mitigate the project’s cumulative contribution to significant impacts at this intersection, and if construction of the managed lanes south segment project is not completed by Caltrans, impacts would remain unmitigated.

**TRAF-6** Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, an extension of the westbound dual-left turn lanes on Mira Mesa Boulevard as well as provide striping, signing, and modifications to increase the storage for the southbound left turn lanes on Westview Parkway in order to increase the capacity of this intersection and increase the capacity of street segments on Mira Mesa Boulevard. This mitigation measure would partially reduce impacts to the Mira Mesa Boulevard street segment from the I-15 on-ramps to Westview Parkway.

**10.4 AIR QUALITY**

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department during construction. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

**AQ-1** During the construction phase, contractors shall maintain equipment and vehicle engines in good condition and in proper tune per manufacturers’ specifications. Construction equipment utilized for grading and excavation shall be equipped with a diesel oxidation catalyst of reducing NOx emissions by 40 percent. As feasible, contractors shall utilize electricity from power poles rather than temporary diesel or gasoline generators. Heavy-duty
haul/delivery trucks shall be prohibited from idling in excess of five minutes, both on and off site, to be consistent with State law.

AQ-2 Construction activity that affects traffic flow on the arterial system shall be limited to off-peak hours, as feasible. In addition, construction parking shall be configured to minimize traffic interference.

No feasible mitigation measures are available to reduce long-term operational PM$_{10}$, CO, and VOC emissions to less than significant levels. The majority of the operational air quality impacts are a result of the estimated 11,088 average daily trips generated by the project (USA 2008a). While the project has included shuttle services, which would serve to reduce operational emissions, the amount of reduction is difficult to quantify. Also, it is not feasible for the applicant to require emission control devices be implemented on private vehicles associated with the project. There are no other feasible mitigation measures to reduce mobile source emissions to less than significant levels. Therefore, the project would result in a significant and unavoidable regional operations impact from PM$_{10}$, CO, and VOC emissions.

10.5 PUBLIC FACILITIES AND SERVICES

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future project plans have incorporated or complied with the following measures:

Entitlements Plan Check

PFS-1 Prior to the issuance of any construction permit, including but is not limited to, demolition, grading, building or any other construction permit, the Assistant Deputy Director (ADD) Environmental Designee shall verify that the all the requirements of the Refuse & Recyclable Materials Storage Regulations and all of the 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.

PFS-2 The construction documents shall include a waste management plan that addresses the following information and elements for demolition, construction, and occupancy phases of the project as applicable:

(a) tons of waste anticipated to be generated
(b) material type of waste to be generated
(c) source separation techniques for waste generated
(d) how materials will be reused on site
(e) name and location of recycling, reuse, or landfill facilities where waste will be taken if not reused on site
(f) a "buy recycled" program

(g) how the project will aim to reduce the generation of construction/demolition debris

(h) a plan of how waste reduction and recycling goals will be communicated to subcontractors

(i) a time line for each of the three main phases of the project as stated above

(j) a list of required progress and final inspections by City staff.

PFS-3 The plan shall strive for a goal of 50% waste reduction.

PFS-4 The plan shall include specific performance measures to be assessed upon the completion of the project to measure success in achieving waste minimization goals.

PFS-5 The Plan shall include notes requiring the Permittee to notify MMC and ESD when:

(a) a demolition permit is issued

(b) demolition begins on site

(c) inspections are needed. The permittee shall arrange for progress inspections, and a final inspection, as specified in the plan and shall contact both MMC and ESD to perform these periodic site visits during demolition and construction to inspect the progress of the project's waste diversion efforts.

When Demolition ends, notification shall be sent to:

Mitigation Monitoring Coordination (MMC) Environmental Review Specialist
9601 Ridgehaven Court, Ste. 320, MS 1102 B
San Diego, CA 92123 1636
(619) 980 7122

Development Service Department, Environmental Services Department (ESD)
9601 Ridgehaven Court, Ste. 320, MS 1103 B
San Diego, CA 92123 1636
(858) 627-3303

PFS-6 Prior to the issuance of any grading or building permit, the applicant shall receive approval, in writing, from the ADD of Entitlements Division, environmental designee (MMC) that the waste management plan has been prepared, approved, and implemented. Also prior to the issuance of any grading or building permit, the applicant shall submit written evidence to the ADD that the final Demolition/Construction report has been approved by MMC and ESD. This report shall summarize the results of implementing the
above Waste Management Plan elements, including: the actual waste generated and diverted from the project, the waste reduction percentage achieved, and how that goal was achieved, etc.

A. Pre Construction Meeting

1. Demolition Permit - Prior to issuance of any demolition permit, the permittee shall be responsible to obtain written verification from MMC indicating that the permittee has arranged a preconstruction meeting to coordinate the implementation of the MMRP. The Precon Meeting that shall include: the Construction Manager, Demolition/Building/Grading Contractor; MMC; and ESD and the Building Inspector and/or the Resident Engineer (RE) (whichever is applicable) to verify that implementation of the waste management plan shall be performed in compliance with the plan approved by Entitlements Division and the San Diego Environmental Services Department (ESD), to ensure that impacts to solid waste facilities are mitigated to below a level of significance.

2. At the Precon Meeting, the Permittee shall submit three (3) reduced copies (11x17 inches) of the approved waste management plan, which two (2) copies are to be distributed to MMC and one (1) ESD.

3. Prior to the start of demolition, the Permittee and/or the Construction Manager shall submit a construction/demolition schedule to MMC and ESD.

   a. Grading and Building Permit - Prior to issuance of any grading or building permit, the Permittee shall be responsible to arrange a preconstruction meeting to coordinate the implementation of the MMRP. The Precon Meeting shall include: the Construction Manager, Building/Grading Contractor, MMC, ESD, and the Building Inspector and/or the Resident Engineer (RE) (whichever is applicable) to verify that implementation of the waste management plan shall be performed in compliance with the plan approved by Entitlement Division and the ESD, to ensure that impacts to solid waste facilities are mitigated to below a level of significance.

4. The Permittee and/or 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
5. Within 30 days after the completion of the implementation of the MMRP, 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.

6. Prior to final clearance of any demolition permit, issuance of any grading or building permit, release of the grading bond and/or issuance of any Certificate of Occupancy, the permittee shall provide documentation to the ADD of the Entitlements Division that the waste management plan has been effectively implemented.

10.6 NOISE

The following measures shall be implemented to reduce exterior noise levels for multifamily residences during construction, to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans incorporate or comply with the following measures:

NOI-1 All construction equipment shall be equipped with mufflers and other suitable noise attenuation devices. This would reduce construction noise levels by at least 5 dB(A).

NOI-2 Grading and construction contractors shall use quieter equipment as opposed to noisier equipment (such as rubber-tired equipment rather than track equipment).

NOI-3 Equipment staging areas shall be located on the southeastern portion of the project site, as far away as possible from single-family residences and the Willard B. Hage Elementary School.

NOI-4 During building construction, the construction contractor shall implement sound attenuation blankets with a Sound Transmission Class rating of ten or more along the northern portion of the project site. The sound attenuation blankets shall break the line-of-sight between construction activities and the single-family residences adjacent to the project site. The sound attenuation blankets shall remain in place as long as construction activity is located within 175 feet of the single-family residences. This would reduce construction noise levels by 10 dB(A) at single-family residences located north of the project site.

NOI-5 During building construction, a five-foot temporary noise barrier (e.g., solid wood) shall be constructed by the construction contractor along the western
portion of the project site such that line-of-sight between construction activities and the Willard B. Hage Elementary School is blocked. The five-foot noise barrier shall remain in place as long as construction activity is located within 175 feet of the elementary school. This would reduce construction noise levels by 5 dB(A) at the Willard B. Hage Elementary School.

**NOI-6** The construction contractor shall establish a noise disturbance coordinator. The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early in the day, bad muffler, etc.) and shall be required to implement measures such that the complaint is resolved to the satisfaction of the City Engineering Department. Signs posted at the construction site shall list the telephone number for the disturbance coordinator.

**NOI-7** During building construction, a five-foot temporary noise barrier (e.g. solid wood) shall be constructed such that the line-of-sight is blocked between construction activity and new dwelling units. The five-foot noise barrier that blocks the line-of-sight from construction activity to new dwelling units constructed on the project site shall remain in place until buildings are constructed during phases 2 and 3.

**NOI-8** Lease agreements for residents occupying Phase 1 and Phase 2 dwelling units shall include notification of on-going phases 2 and 3 construction activity.

**NOI-9** An eight-foot permanent noise barrier (e.g., earth berm, solid wall, or some combination therefore) shall be constructed between the northeastern recreation area and I-15.

With implementation of NOI-1 through NOI-6, construction noise levels at the single-family residences north of the project site, the Willard B. Hage Elementary School, and single-family residences northwest of the project would be reduced to below the 75 dB(A) construction noise threshold. Therefore, construction noise would result in a less-than-significant impact to off-site receptors after implementation of mitigation.

Mitigation measures NOI-1 and NOI-7 would each reduce construction noise levels at Phase 1 dwelling units by 5 dB(A), reducing the noise levels at Building 1 to 79 dB(A). This would exceed the 75 dB(A) significance threshold and, as such, construction noise would result in a short-term significant and unavoidable impact to new on-site residences.

Mitigation measure NOI-9 would reduce exterior noise levels at the northeastern recreational area by approximately 7 dB(A). This would result in maximum exterior noise levels of approximately 59.6 dB(A); which is below the 60 dB(A) significance threshold. Therefore, impacts from the northeastern recreational area would be reduced to less than significant levels.
The following measures shall be implemented to reduce potential impacts to paleontological resources, to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

**PALEO-1**

The following shall be implemented:

**I. Prior to Permit Issuance**

**A. Entitlement Division Plan Check**

1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

**B. Letters of Qualification have been submitted to ADD**

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.

2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.

3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

**II. Prior to Start of Construction**

**A. Verification of Records Search**

1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.

   a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.

2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).

3. When Monitoring Will Occur

   a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.

   b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.
During Construction

A. Monitor Shall be Present During Grading/Excavation/Trenching

1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.

2. The monitor shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR’s shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of ANY discoveries. The RE shall forward copies to MMC.

3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.

2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.

3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI shall evaluate the significance of the resource.

   a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is
required. The determination of significance for fossil discoveries shall be at the discretion of the PI.

b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.

c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.

d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

IV. Night and/or Weekend Work

A. If night and/or weekend work is included in the contract

1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.

2. The following procedures shall be followed.

a. No Discoveries

In the event that no discoveries were encountered during night and/or weekend work, The PI shall record the information on the CSVR and submit to MMC via fax by 8AM on the next business day.

b. Discoveries

All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.

c. Potentially Significant Discoveries

If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.
d. The PI shall immediately contact MMC, or by 8AM on the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

B. If night work becomes necessary during the course of construction

1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.

2. The RE, or BI, as appropriate, shall notify MMC immediately.

C. All other procedures described above shall apply, as appropriate.

V. Post Construction

A. Preparation and Submittal of Draft Monitoring Report

1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Paleontological Guidelines which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring.

   a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.

   b. Recording Sites with the San Diego Natural History Museum

      The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.

2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.

3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
4. MMC shall provide written verification to the PI of the approved report.

5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Fossil Remains

1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.

2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.

C. Curation of fossil remains: Deed of Gift and Acceptance Verification

1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.

2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.

D. Final Monitoring Report(s)

1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.

2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC, which includes the Acceptance Verification from the curation institution.

10.8 BIOLOGICAL RESOURCES

The following measures shall be implemented to reduce potential impacts to biological resources to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

BIO-1 To avoid direct impacts to the California horned lark, which nests on the ground and could nest on site, nesting bird surveys shall be conducted within 72 hours of any vegetation clearing if development occurs between March 15 and August 15. If occupied nests are present within 500 feet of the
construction area, impacts to vegetation shall be avoided until the juvenile birds have fledged.

In addition, implementation of mitigation measures LU-1, LU-2 and LU-3 (see Section 4.1, Land Use) would reduce off-site short-term indirect significant impacts to special status wildlife species and sensitive vegetation communities to below a level of significance.

Implementation of mitigation measures BIO-1, BIO-2, and BIO-3 would reduce the potential significant impact on nesting birds to below a level of significance:

BIO-2 If the site has a potential to support nests and nesting raptors are present during grading and/or construction activities, compliance with the Migratory Bird Treaty Act/Section 3503 would preclude the potential for direct impacts.

BIO-3 If there is a potential for indirect noise impacts to nesting raptors, prior to any grading within the development area during the raptor breeding season (January 15 through August 15) the biologist shall ensure that no raptors are nesting. If construction occurs during the raptor breeding season a preconstruction survey shall be conducted and no construction shall be allowed within 300 to 500 feet of any identified nest(s) until the young fledge. Should the biologist determine that raptors are nesting, an active nest shall not be removed until after the breeding season.

The following mitigation measure would reduce potential off-site impacts to nesting birds along the Black Mountain Road off-site traffic improvement area to less than significant:

BIO-4 To avoid indirect impacts to raptors nesting in adjacent trees east of the work area, a nesting raptor survey shall be conducted by a qualified biologist within 72 hours prior to the start of grading if construction occurs between January 15 and August 15. If occupied nests are present within 500 feet of the construction area, construction must be avoided to the 500-foot buffer area around the nest until the juvenile birds have fledged.
ORDINANCE NUMBER O-____________ (NEW SERIES)

DATE OF FINAL PASSAGE _______________

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO CHANGING 56.30 ACRES LOCATED ON THE EAST SIDE OF WESTVIEW PARKWAY, NORTH OF MIRA MESA BOULEVARD, WITHIN THE MIRA MESA COMMUNITY PLAN AREA, IN THE CITY OF SAN DIEGO, CALIFORNIA, FROM THE RM-3-7 ZONE INTO THE RM-3-8 ZONE, AS DEFINED BY SAN DIEGO MUNICIPAL CODE SECTION 131.0400, AND REPEALING ORDINANCE NO.O-18451 (NEW SERIES), ADOPTED DECEMBER 9, 1997, OF ORDINANCES OF THE CITY OF SAN DIEGO INSO_FAR AS THE SAME CONFLICTS HEREWITH.

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

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That 56.30 acres located on the east side of Westview Parkway, north of Mira Mesa Boulevard, and legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder in the Mira Mesa Community Plan area, in the City of San Diego, California, as shown on Zone Map Drawing No. B-4269, filed in the office of the City Clerk as Document No. O0-__________, are rezoned from the Residential Base zones into the Residential Base zones, as the RM-3-8 zone is described and defined by San Diego Municipal Code Chapter 13 Article 1 Division 4. This action amends the Official Zoning Map adopted by Resolution R-301263 on February 28, 2006.
Section 2. That Ordinance No. O-18451 (New Series), adopted December 9, 1997, of the ordinances of the City of San Diego is repealed insofar as the same conflicts with the rezoned uses of the land.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage, and no building permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefore was made prior to the date of adoption of this ordinance.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

//Submitted without signature/

By

Shirley R. Edwards
Chief Deputy City Attorney
RESOLUTION NUMBER R-________________

DATE OF FINAL PASSAGE _______________

APPROVING VESTING TENTATIVE MAP NO. 481936 AND
EASEMENT VACATION NO. 368513 FOR THE CASA MIRA
VIEW PROJECT.

WHEREAS, Scripps Mesa Developers, LLC, a California Limited Liability Company,
Applicant/Subdivider, and John D. Leppert, Engineer, submitted an application to the City of
San Diego for a vesting tentative map (Vesting Tentative Map [VTM] No. 481936) and
ease ment vacation (Easement Vacation No. 368513), for the subdivision of land to develop a
condominium project with 1,848 condominium units for the Casa Mira View Project [Project],
located on the east side of Westview Parkway, north of Mira Mesa Boulevard, and legally
described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in
the Office of the County Recorder, in the Mira Mesa Community Plan area, in the RM-3-7 zone
which is proposed to be rezoned to the RM-3-8 zone; and

WHEREAS, the Map proposes the subdivision of a 41.31-acre site into six lots for
condominium development; and

WHEREAS, the project complies with the requirements of a preliminary soils and/or
geological reconnaissance report pursuant to the Subdivision Map Act and Section 144.0220 of
the Municipal Code of the City of San Diego; and

WHEREAS, the subdivision is a condominium project as defined in Section 1350 et seq.
of the Civil Code of the State of California and filed pursuant to the Subdivision Map Act. The
total number of condominium dwelling units is 1,848; and
WHEREAS, on October 2, 2008, the Planning Commission of the City of San Diego considered VTM No. 481936 and Easement Vacation No. 368513, and pursuant to Resolution No. 4449-PC voted to recommend City Council approval of the vesting tentative map; and

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

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

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to VTM No. 481936 and Easement Vacation No. 368513:

1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan (Land Development Code [LDC] section 125.0440(a) and Subdivision Map Act Sections 66473.5, 66474(a), and 66474(b)).

2. The proposed subdivision complies with the applicable zoning and development regulations of the LDC section 125.0440(b)).

3. The site is physically suitable for the type and density of development (LDC section 125.0440(c) and Subdivision Map Act Sections 6474(c) and 66474(d).

4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat (LDC section 125.0440(d) and Subdivision Map Act Section 66474(e)).

5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare (LDC section 125.0440(e) and Subdivision Map Act Section 66474(f)).
6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision (LDC section 125.0440(f) and Subdivision Map Act Section 66474(g)).

7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (LDC section 125.0440(g) and Subdivision Map Act Section 66473.1)).

8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources (LDC section 125.0440(h) and Subdivision Map Act Section 66412.3)).

9. The property contains an easement which must be vacated to implement the Final Map in accordance with San Diego Municipal Code section 125.0430.

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

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), portions of Public Sewer and Storm Drain Easement per Document Recorded on August 26, 1977 as Instrument No. 77-351287, or O.R., portions of Drainage, Water Access and Sewer Facilities Easement dedicated per Map No. 7988, portions of Antenna Easement per Document recorded on November 23, 1971, as Instrument No. 71-273372, of O.R., portions of Sewer and Water Easement per Document recorded on November 23, 1977, as Instrument No. 77-486328, O.R., portions of Public Utilities Easement per Document recorded on September 21, 1992, as Instrument No. 1992-0597862, of O.R., portions of Water and Sewer Easement dedicated per Map No. 7988, located within the project boundaries as shown in Vesting Tentative Map No. 481936, shall be vacated, contingent upon the recordation of the approved final map for the project.

BE IT FURTHER RESOLVED, that VTM No. 481936 and Easement Vacation No. 368513 is granted to Scripps Mesa Developers, LLC, a California Limited Liability
Company, Applicant/Subdivider and John D. Leppert, Engineer, subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

//Submitted without signature//

By

Shirley R. Edwards
Chief Deputy City Attorney

SRE: cw: pev
10/09/08
Or. Dept: DSD
R-2009-447
MMS: #6880
CONDITIONS FOR TENTATIVE MAP NO. 368513
CASA MIRA VIEW PROJECT
ADOPTED BY RESOLUTION NO. R-_________ ON ____________

GENERAL

1. This Vesting Tentative Map [VTM] will expire on ________________.

2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.

3. Prior to the VTM expiration date, a Final Map to consolidate the existing lots into six lots shall be recorded in the Office of the County Recorder.

4. The Final Map shall conform to the provisions of Planned Development Permit [PDP] No. 294375/Site Development Permit [SDP] No. 294373.

5. The Subdivider 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, including, but not limited to, any 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 Subdivider of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Subdivider 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, Subdivider 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 Subdivider 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 Subdivider shall not be required to pay or perform any settlement unless such settlement is approved by Subdivider.

AFFORDABLE HOUSING

6. Prior to the recordation of the Final Map, the Subdivider shall enter into an affordable housing agreement with the Housing Commission to provide affordable housing units in compliance with the Affordable Housing
Requirements of the City’s Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code [LDC]).

ENGINEERING

7. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.

8. The Subdivider shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practice [BMP’s] maintenance.

9. Prior to the issuance of any construction permit, the Subdivider shall incorporate any construction BMP’s necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code [SDMC], into the construction plans or specifications.

10. Prior to the issuance of any construction permit the Subdivider shall incorporate and show the type and location of all post-construction BMP’s on the final construction drawings, in accordance with the approved Water Quality Technical Report.

11. The Final Map shall comply with the provisions of PDP No. 294375/SDP No. 294373.

12. The drainage system proposed for this subdivision, as shown on the approved VTM is subject to approval by the City Engineer, including the realigned storm drain and its appurtenances for maintenance.

13. Prior to the issuance of grading permits, a geotechnical investigation report shall be required that specifically addresses the proposed grading plans and cites the City’s account number and Drawing number. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over-excavation depth, and limits of remedial grading.

14. The Subdivider shall obtain a grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

15. Compliance with all conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map.

16. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No.
CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent [NOI] shall be filed with the SWRCB.

17. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99-08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99-08 DWQ.

18. All driveways and curb openings shall comply with City Standard Drawings G-14A, G-16 and SDG-100.

19. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.

20. The Subdivider shall ensure that all existing onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The Subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.

21. Conformance with the “General Conditions for Tentative Subdivision Maps,” filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. RR-297376.

MAPPING

22. “Basis of Bearings” means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 [NAD 83].

23. "California Coordinate System means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone
for San Diego County is “Zone 6,” and the official datum is the “North American Datum of 1983.”

24. The Final Map shall:

a. Use the California Coordinate System for its “Basis of Bearing” and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.

b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

WASTEWATER AND WATER

25. The Subdivider shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved Tentative Map will require modification based on the accepted sewer study.

26. The Subdivider shall abandon the existing onsite public sewer main in the south portion of this lot or it will be converted to private, satisfactory to the Director of Public Utilities. All associated public sewer easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.

27. The Subdivider shall provide evidence, satisfactory to the Director of Public Utilities, indicating that each condominium will have its own sewer lateral or provide CC&R’s for the operation and maintenance of private sewer facilities that serve more than one ownership.

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

29. The Subdivider shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego’s Sewer Design Guide.

30. All onsite sewer facilities shall be private.
31. The Subdivider shall grant adequate water easements, including vehicular access, to each appurtenance; including meters, blow offs, valves, fire hydrants, et cetera, for all public water facilities that are not located within fully improved public rights of way, satisfactory to the Director of Public Utilities.

32. Prior to recording the final map, the Subdivider shall properly abandon the portions of existing 12-inch diameter water main per City drawing number 16126-D which traverses the site in a manner satisfactory to the Director of Public Utilities.

33. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two fire hydrants or thirty dwelling units are located on a dead end main then the Subdivider shall install a redundant water system satisfactory to the Director of Public Utilities.

34. The Subdivider shall design and construct all irrigation systems to utilize reclaimed water in a manner satisfactory to the Director of Public Utilities.

35. The Subdivider shall provide CC&R’s for the operation and maintenance of on site private water facilities that serve or traverse more than one lot or unit.

36. The Subdivider agrees to design and construct all proposed public water facilities, including services, meters, and easements in accordance with established criteria in the most current edition of the City San Diego Water Facility Design Guidelines and regulations, standards, and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private.

37. Prior to the approval of any public improvement drawings, the Subdivider shall provide acceptable potable and reclaimed water studies satisfactory to the Director of Public Utilities. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies.
INFORMATION:

- The approval of this VTM by the Council of the City of San Diego does not authorize the Subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).

- If the Subdivider makes any request for new water and sewer facilities, including services, fire hydrants, and laterals, then the Subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.

- Subsequent applications related to this VTM will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the VTM, may protest the imposition within ninety days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.

- Where in the course of development of private property, public facilities are damaged or removed the property owner shall at no cost to the City obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer SDMC section 142.0607.
RESOLUTION NUMBER R-______________________
DATE OF FINAL PASSAGE ____________________

RESOLUTION GRANTING PLANNED DEVELOPMENT PERMIT NO. 294375/SITE DEVELOPMENT PERMIT NO. 294373 FOR THE CASA MIRA VIEW PROJECT.

WHEREAS, Scripps Mesa Developers, LLC, a Limited Liability Company, Owner/Permittee, filed an application with the City of San Diego for a planned development permit/site development permit to subdivide and develop a condominium project with 1,848 condominium units, known as the Casa Mira View project, located on six parcels along the east side of Westview Parkway between Dauntless Street and Mira Mesa Boulevard in the Mira Mesa community, and legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder, in the Mira Mesa Community Plan area, in the RM-3-7 zone which is proposed to be rezoned to the RM-3-8 zone; and

WHEREAS, on October 2, 2008, the Planning Commission of the City of San Diego considered Planned Development Permit [PDP] No. 294375/Site Development Permit [SDP] No. 294373, and pursuant to Resolution No. 4449-PC voted to recommend City Council approval of the Permit; and

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

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

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to PDP No. 294375/SDP No. 294373:

A. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0604

1. The proposed development will not adversely affect the applicable land use plan. The proposed multi-family development on the 41.31-acre site is designated for Residential use by the Mira Mesa Community Plan and allows residential development at the densities allowed by the existing RM-3-8 zone. The proposed project site is located within the Mira Mesa Community Plan area and designated for Medium-high density residential development at 30-45 dwelling units per net acre. The project as proposed conforms to the density in the community plan. With the approval of the rezone, the project would be also consistent with the approved development agreement. The project will help satisfy a variety of goals of the applicable land use plans. The project will increase the supply of housing in the community within walking distance of transit, shopping, and employment opportunities. Development of the property would not conflict with goals of the community plan relative to topography as the project site has been previously graded. Being determined the project is consistent with the Progress Guide and General Plan, the Mira Mesa Community Plan, the regulations of the RM-3-8 zone and the Planned Development Permit regulations, the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed development is included in a Development Agreement, Doc. No. 00-17178, filed November 14, 1988, and as such has or will provide significant public benefits which would not have occurred otherwise. The proposed development will construct necessary sewer and water facilities to serve the residents of the development; will enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP's] maintenance; will comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for
Discharges of Storm Water Runoff Associated With Construction Activity. The development will also provide for the health, safety, and welfare of the residents by constructing all buildings in accordance with current construction standards and codes. All structures constructed will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. As such the proposed development will not be detrimental to the public health, safety, and welfare.

3. **The proposed development will comply with the regulations of the Land Development Code.** The proposed development complies with the regulations of the RM-3-8 zone and site-specific development regulations for the property. No deviations or variances are required to approve the proposed project. The proposed development complies with all relevant regulations of the Land Development Code. Specific conditions of approval require the continued compliance with all relevant regulations of the City of San Diego effective for this site and have been written as such into PDP No. 294375/SDP No. 294373. Development of the property will meet all requirements of these regulations. Concept plans for the project identify all other development criteria in effect for the site. All relevant regulations shall be complied with at all times for the life of the project. In these ways the proposed development will comply with the applicable and relevant regulations of the Land Development Code.

4. **The proposed development, when considered as a whole, will be beneficial to the community.** The project will provide several significant features, amenities and improvements in the community. The project will add 1,848 housing units to the housing stock of the City of San Diego at a time in the history of the city when there is a housing shortage and in a community with a very low vacancy rate. The city currently has a very limited supply of land designated and zoned for medium to high density multi-family housing. Increasing the housing supply will be particularly beneficial in the Mira Mesa area because of the large and expanding employment base in the area. This site has long been identified in the Community Plan as the location where density should be located. This proposal will help to alleviate the shortage of multi-family housing opportunities. This project will also provide for affordable housing opportunities on-site. Housing near the many employment sites in Mira Mesa will aid in reducing automobile congestion, particularly during peak travel hours. The project will also create public areas within the property to promote pedestrian activity. Pedestrian walkways have been provided around the entire perimeter of the project which creates opportunities for the public display of art. Finally, the developer will be providing much needed FBA funding for the completion of identified public improvements. Furthermore, of the 1,848 units fully 10 percent or 185 dwelling units will be affordable to persons earning no more than 65 percent of the County average median income. Thus the development of the project will materially benefit the city by providing both housing units during a shortage of supply and by providing affordable housing to persons of special need. The resulting benefits of the project will be positive for the community and City of San Diego.

5. **Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.**
The project includes several deviations, all of which provide a more desirable project. The deviations are as follows:

a. A deviation to increase the maximum allowed height of the structures. The maximum height proposed with this project is isolated at several locations along the buildings at 64 feet 7 inches above finish grade where 50 feet is otherwise allowed. Due to the existing grading of the site to control storm water on-site during the years of vacancy, when the buildings are measured from the pre-existing ground, the maximum height would be as much as 80 feet or 30 feet above the maximum allowed in the RM-3-8 zone. While the height of the flat roofed buildings is much closer to the 50 foot requirement, this increased height in limited areas on the site at specific locations of the building will permit greater flexibility for the design of the roofline, allow for more articulation of the parapets and turrets above the roofline, and an opportunity to increase the amount of open space being provided on the ground by the project. Allowing the deviation to the maximum height also results in an increase of the overall setbacks of the proposed buildings to the adjacent property lines. While the entire project meets the required setback requirements, the increase in allowable building height enables the project to greatly exceed the setback requirements. This further permits greater opportunities for landscaping within the project and along the adjacent streets of Westview Parkway and Interstate 15. When the density for the project site was designated in the community plan and in the existing Development Agreement, Doc. No. 00-17178, filed November 14, 1988, approximately twenty years ago, there was no height limit for the comparable zone. Height limits within the previous zone were not introduced into the Land Development Code until 2000 when the Land Development Code was last updated. If the buildings were reduced in height by even one entire floor, a project design consisting of the same number of dwelling units and unit floor area or square footage, would occupy an additional 201,110 square feet of site area on the ground or 4.62 acres of land. This would result in a needless reduction in usable open space and building setbacks and is not deemed to be as beneficial to the City and Mira Mesa community as allowing the proposed height deviation.

b. A deviation to develop less than the required 33 percent of the allowable floor area ratio [FAR] for structured parking. The efficiency of the architectural plan approved for the project results in structured parking that occupies less than the required minimum 33 percent of the allowable FAR. In addition, the structured parking will not be visible from any public vantage point. The residential buildings will surround the parking structures. Approving the project with a lower allocation of floor area ratio devoted to the required parking structures will result in greater amount of usable open space available to residents and visitors to the project. The project will provide a maximum of 27 percent of the available FAR for structured parking.

c. A deviation to allow an 8 foot high noise wall within the southerly side yard setback where a maximum height of 6 feet is otherwise permitted. This setback area is very wide and is measured at 59 feet in width. The noise wall is necessary to protect recreational uses that will be constructed and occur in this location within this setback area.
d. A deviation to allow the construction of carports for all the parking stalls located on the top deck of each parking structure rather than providing trees in raised containers to meet the tree distribution requirements for parking lots required in the City-wide Landscape Regulations. The purpose of providing trees within parking lots is to create shading of the pavement to reduce the heat island effect of large expanses of pavement. Carports will provide a superior quantity of shading on the parking structure deck when compared to living trees. Trees installed in containers on the top deck of the parking structure will never attain a height and breadth capable of providing an equivalent amount of shade as will be permanently provided by the carports.

As a result of the approved deviations and other design features of the project, the proposed project conforms to the overall policies, regulations and purpose and intent of the Planned Development regulations. The design will result in a more desirable project for the City and the community than would be realized through the strict application of the development regulations at this location.

B. SITE DEVELOPMENT PERMIT – SDMC SECTION 126.0504

1. Findings for all Site Development Permits:

a. The proposed development will not adversely affect the applicable land use plan. The proposed multi-family development on the 41.31-acre site is designated for Residential use by the Mira Mesa Community Plan and allows residential development at the densities allowed by the existing RM-3-8 zone. Being determined the project is consistent with the Progress Guide and General Plan, the Mira Mesa Community Plan, the regulations of the RM-3-8 zone and the Planned Development Permit regulations, the proposed development will not adversely affect the applicable land use plan. Refer to Planned Development Permit Finding No. 1 above for additional detail.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed development is included in a Development Agreement, Doc. No. 00-17178, filed November 14, 1988, and as such has or will provide significant public benefits which would not have occurred otherwise. All structures constructed will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. As such the proposed development will not be detrimental to the public health, safety, and welfare. Refer to Planned Development Permit Finding No. 2 above for additional detail.

c. The proposed development will comply with the applicable regulations of the Land Development Code. The proposed development complies with the regulations of the RM-3-8 zone and site-specific development regulations for the property. No deviations or variances are required to approve the proposed project. The proposed development complies with all relevant regulations of the Land Development Code. Refer to Planned Development Permit Finding No. 3 above for additional detail.
2. **Supplemental Findings—Deviations for Affordable/In-Fill Housing Projects and Sustainable Buildings**

a. The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City, and/or the proposed development will materially assist in reducing impacts associated with fossil fuel energy use by utilizing alternative energy resources, self-generation and other renewable technologies (e.g. photovoltaic, wind, and/or fuel cells) to generate electricity needed by the building and its occupants. One hundred eighty-five dwelling units of affordable family housing will be developed as a result of the approval and subsequent construction of the project. One thousand six hundred sixty-three for-sale market rate condominiums will be developed. There will be no discernable distinction between the affordable and market rate units. These project features and goals will provide needed housing and development in an area of the city replete with redevelopment opportunity. The provision of 185 dwelling units affordable to persons at the income range described as 65 percent of the County average median income will contribute in a real and meaningful way towards the goals of providing affordable housing in the City.

b. The development will not be inconsistent with the purpose or the underlying zone. The development of 1,848 dwelling units on the proposed site will be consistent with the regulations of the RM-3-8 zone and all other regulations and policies of the City of San Diego which zone the site for residential use. The purpose of the RM-3-8 zone is to allow for the provision and development of multiple unit housing in accordance with specific development regulations of the zone in areas designated by the zoning and community plan for multiple family dwelling units. Development of the site with the project will comply with all relevant regulations of the RM-3-8 zone.

c. Any proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. The proposed development complies with the Mira Mesa Community Plan which designates the site for multiple dwelling unit development. The proposed deviations are necessary to maximize the use of the land and to provide the highest quality affordable housing development. The deviations are required due to existing infrastructure adjacent to the site and to the limitations of the zoning regulations. The proposed project includes architectural plans with extensive articulation and fenestration. This level of detail is consistent with the purpose and intent of the planned development regulations; however, in order to implement the site plan and architecture at this site; and to maximize the density and intensity of development at the site to contribute to the housing stock of the City of San Diego, the proposed deviations are granted. All other requirements comply with the regulations which apply to the project site in accordance with the Land Development Code.
The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that PDP No. 294375/SDP No. 294373 is granted to Scripps Mesa Developers, LLC, a 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: MICHAEL J. AGUIRRE, City Attorney

//Submitted without signature//

By

Shirley R. Edwards
Chief Deputy City Attorney
This Planned Development Permit No. 294375 and Site Development Permit No. 294373 is granted by the Council of the City of San Diego to Scripps Mesa, LLC, a California limited liability company, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0600 and 126.0500. The 41.31 acre site is located on the east side of Westview Parkway between Dauntless Street and Mira Mesa Boulevard in the RM-3-7 Zone which is proposed to be rezoned to the RM-3-8 Zone in the Mira Mesa community plan area. The project site is legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for the subdivision of land to develop a condominium project with 1,848 condominium units, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit “A”] dated [INSERT Approval Date], on file in the Development Services Department.

The project shall include:

a. The subdivision of land and development of a condominium project with 1,848 condominium units of which 185 dwelling units shall be affordable housing units in compliance with the Inclusionary Housing Ordinance; forty of these affordable housing units may be located off-site at the Legacy Apartments project, consistent with an agreement with the Housing Commission;

b. Four deviations are approved with the project and are described as follows: 1) Maximum building height would be 64 feet 7 inches above the proposed finish grade where 50 feet is otherwise allowed; 2) Develop less than 33% of the minimum required Floor Area Ratio (FAR) for the structured parking. The structured parking FAR would
be 27.9%; 3) An eight foot noise wall within the southerly side yard setback, where a maximum height of six feet is allowed; 4) Allow construction of carports for all parking spaces located on the top deck of each parking structure in lieu of complying with the tree distribution requirements for parking lots.

c. Landscaping (planting, irrigation and landscape related improvements);

d. Off-street parking;

e. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit 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.

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. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

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 modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Construction plans shall be in substantial conformity to Exhibit “A.” No changes, modifications or alterations shall be made 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 have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that 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 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, including, but not limited to, any 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 are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

13. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Environmental Impact Report No. 91647, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in Environmental Impact Report No. 91647, satisfactory to the Development Services Department and the City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be complied with, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

   - Land Use/Multiple Species Conservation Program
   - Traffic/Circulation
   - Air Quality
   - Public Facilities and Services
   - Noise
   - Paleontological Resources
   - Biological Resources

15. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City’s costs associated with implementation of permit compliance monitoring.

ENGINEERING REQUIREMENTS:

16. The Permit shall comply with the conditions of the Vesting Tentative Map No. 481936.

LANDSCAPE REQUIREMENTS:

17. Prior to issuance of any construction permits for grading, the Owner/Permittee shall submit landscape construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the Land Development Manual Landscape Standards and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit and Exhibit “A.”

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18. Prior to issuance of any construction permits for buildings, the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit “A.”

19. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections. A “No Fee” Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

20. The Owner/Permittee shall maintain all landscape in a disease, weed and litter free condition at all times. Severe pruning or “topping” of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

21. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual, Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

22. If any required landscape, including but not limited to existing or new plantings, hardscape, landscape features, indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee is responsible to repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to a Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

23. No fewer than 3,387 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit “A.” Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the Development Services Department.

24. 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.

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

26. The Owner/Permittee shall post a copy of this permit and Tentative Map in the sales office for consideration by each prospective buyer.
27. 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.

28. Prior to the issuance of building permits, the Owner/Permittee shall vary the architectural theme and color palette consistent with the approved Exhibit “A,” satisfactory to the Development Services Director. Actual color selections may vary at the time of paint application in the field.

TRANSPORTATION REQUIREMENTS

29. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Mira Mesa Boulevard and Black Mountain Road.

30. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, widening of eastbound and westbound approaches and assure an additional westbound right-turn lane at the intersection of Black Mountain Road and Gold Coast Drive.

31. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Black Mountain Road and Hillery Drive.

32. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall provide a fair-share contribution of $75,268 toward improvements at the intersection of Black Mountain Road and Carroll Canyon Road, to the satisfaction of the City Engineer.

33. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall either provide a fair-share contribution of $1,572,000 towards the construction of the I-15 ‘managed lanes south segment’ project or provide a fair-share contribution distributed by building and totaling $1,572,000 (in 2008 dollars) in the following manner: Prior to the issuance of a building permit for the first residential building permit, the Owner/Permittee shall provide a fair-share contribution of $700,000 (in 2008 dollars). Prior to the issuance of a building permit for the second building (811th residential unit), the Owner/Permittee shall provide a fair-share contribution of $700,000 (in 2008 dollars). Prior to the issuance of a building permit for the third building (1621st residential unit), the Owner/Permittee shall provide a fair-share contribution of $172,000 (in 2008 dollars) towards the construction of the I-15 ‘managed lanes south segment’ project. This contribution is to be paid subject to the satisfaction of the City Engineer.

34. Prior to the issuance of a building permit for the second building (811th residential dwelling unit), the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a third northbound and a third southbound thru lanes and transitions on Black
Mountain Road from Mercy Road transitioning to four lanes prior to the Penasquitos Canyon Creek Bridge.

35. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, an extension of the westbound dual-left turn lanes on Mira Mesa Boulevard as well as provide striping, signing, and modifications to increase the storage for the southbound left turn lanes on Westview Parkway in order to increase the capacity of this intersection and increase the capacity of street segments on Mira Mesa Boulevard.

36. Prior to the issuance of a building permit for the second building (811th residential unit), the Owner/Permittee shall provide a private shuttle service as part of the Transportation Demand Management Plan connecting the project to existing shopping opportunities at Mira Mesa Marketplace Center and transit connections on Mira Mesa Boulevard and Black Mountain Road subject to the satisfaction of the City Engineer. This shuttle shall have two stops on the project site and shall be limited to residents and guests of the development. The shuttle shall carry no fewer than 16 passengers and shall conform to the requirements of the American with Disabilities Act (ADA accessible). The shuttle shall maintain 15 minute headways in weekday peak hours. Days, hours of operation, and routing are to be satisfactory to the City Engineer.

37. Prior to the issuance of a building permit for first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a traffic signal at the intersection of Westview Parkway and the project’s main access, relocation of the park driveway to be located at the signalized location, re-striping of Westview Parkway to accommodate the signal, and a signal interconnect between the existing signals on Westview parkway at Galvin/Westview parkway at Capricorn and the new signalized project access on Westview parkway.

38. Prior to the issuance of a building permit for the third building (1621st dwelling unit) the Owner/Permittee shall provide, to the satisfaction of the City Engineer, an improvement for a connection to the existing public road and signal at Galvin Avenue and Westview Parkway to provide a second signalized access to the project.

**WASTEWATER REQUIREMENTS:**

39. All onsite sewer facilities will be private.

40. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of all public sewer facilities necessary to serve this development.

41. Prior to the issuance of any occupancy permit, the Owner/Permittee shall abandon the existing onsite public sewer main in the south portion of this lot or it will be converted to private, satisfactory to the Director of Public Utilities. All associated public sewer easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.
42. Prior to the issuance of any engineering or building permits, the Owner/Permittee shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of private sewer facilities that serve more than one ownership.

43. The Owner/Permittee shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

44. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

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

**WATER REQUIREMENTS:**

46. Prior to the approval of any public improvement drawings, the Owner/Permittee shall provide acceptable potable and reclaimed water studies satisfactory to the Public Utilities Director. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies.

47. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) and the removal of all existing unused services within the proposed driveway easement access, in a manner satisfactory to the Public Utilities Director and the City Engineer.

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

49. Prior to the issuance of any building permits, the Owner/Permittee shall grant additional widened easement to include the proposed alignment of the driveway entrance, fire lane and portions of the northwest driveway which contain the existing water main and all associated water appurtenances including but not limited to the water and fire services, on-site fire hydrants, et cetera, in a manner satisfactory to the Public Utilities Director and the City Engineer.

50. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer.
51. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Public Utilities Director and the City Engineer.

52. Prior to issuance of any building or construction permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of recycled water services to provide connection to the recycled water system to be used for all irrigation and construction needs of the project as approved by the Public Utilities Director and the City Engineer. If recycled water is not yet available, then the irrigation systems shall be designed in such a manner as to accept recycled water when available and avoid any potential cross connections.

53. Prior to issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to provide connection to the recycled water system to be used for all irrigation needs of the project.

54. Prior to issuance of any building permits, the Owner/Permittee shall provide the Covenants, Conditions and Restrictions (CC&R’s) that will be used by the Casa Mira View Homeowners Association for the operation and maintenance of all the private water recycling lines and appurtenances that serve the site. The CC&R’s must also include LEED certified water conservation measures or equivalent and WaterSense or Energy Star appliances.

55. The Owner/Permittee shall design and construct all proposed buildings in compliance with the State of California 2007 California Green Building Standards Code, CCR, Title 24, Part 11 or comparable for water conservation measures which achieves a 20% improvement in water use efficiency for residential and commercial plumbing fixtures over the building code in effect as of the date of preparation of the Water Supply Assessment.

56. The Owner/Permittee agrees to design and construct all proposed buildings to include LEED certified or equivalent water conservation measures and Water Sense or Energy Star Appliances as approved by the Public Utilities Director and the City Engineer. These measures shall reduce the overall water demand by a minimum of 7.5%.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development 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 §66020.

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

APPROVED by the Council of the City of San Diego on [date and resolution number].
Permit Type/PTS Approval No.: PDPermit No. 294375 and SDP No. 294373

Date of Approval:

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

Kelly Broughton
Director
Development Services

NOTE: Notary acknowledgment must be attached per Civil Code section 1180 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.

Scripps Mesa, LLC, Owner/Permittee
Owner/Permittee

By
NAME
TITLE

Scripps Mesa, LLC, Owner/Permittee
Owner/Permittee

By
NAME
TITLE

NOTE: Notary acknowledgments must be attached per Civil Code section 1180 et seq.
RESOLUTION NUMBER R-______
ADOPTED ON ________

WHEREAS, on June 14, 2006, SCRIPPS MESA DEVELOPERS, LLC, submitted an application to the Development Services Department for a Rezone, Easement Vacation, Vesting Tentative Map, Planned Development Permit and Site Development Permit;

WHEREAS, the permit was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the issue was heard by the City Council on DATE; and

WHEREAS, the Council of the City of San Diego considered the issues discussed in Environmental Impact Report No.91647/SCH No 2007111095. NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is hereby certified that Environmental Impact Report No. 91647/SCH No 2007111095, in connection with the Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administration Code Section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the City Council.
BE IT FURTHER RESOLVED that pursuant to California Public Resources Code Section 21081 and Administrative Code Section 15091, the City Council hereby adopts the Findings made with respect to the project, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED that pursuant to California Public Resources Code, Section 21081.6, the City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference.

APPROVED: Michael Aguirre, City Attorney

By: ____________________________
    Deputy City Attorney

ATTACHMENT: Exhibit A, Mitigation Monitoring and Reporting Program
MITIGATION MONITORING AND REPORTING PROGRAM

Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373

PROJECT NO. 91647

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All mitigation measures contained in the Environmental Impact Report (Project No. 91647/SCH No 2007111095) shall be made conditions of the Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373 as may be further described below.

As Lead Agency for the proposed project under CEQA, the City of San Diego will administer the MMRP for the following environmental issue areas as identified in the Casa Mira View EIR: Land Use/Multiple Species Conservation Program; Traffic/Circulation; Air Quality; Public Facilities and Services; Noise; Paleontological Resources and Biological Resources. The mitigation measures identified below include all applicable measures from the Casa Mira View EIR (Project No. 91647/SCH No. 2007111095). This MMRP shall be made a requirement of project approval.

Section 21081.6 to the State of California Public Resources Code requires a lead or responsible agency that approves or carries out a project where an environmental impact report (EIR) has identified significant environmental effects to adopt a "reporting or monitoring program for adopted or required changes to mitigate or avoid significant environmental effects." The City of San Diego is the Lead Agency for the Casa Mira View EIR, and therefore must ensure the enforceability of the Mitigation Monitoring and Reporting Program (MMRP). An EIR, has been prepared for this project which addresses potential environmental impacts and, where appropriate, recommends measures to mitigate these impacts. As such, an MMRP is required to ensure that adopted mitigation measures are implemented.

10.1 GENERAL

Prior to issuance of a Notice to Proceed (NTC), the Assistant Deputy Director (ADD) Environmental Designee of the Entitlements Division shall verify that the following Mitigation Measures have been included in entirety on the submitted construction documents and contract specifications, and included under the heading, "Environmental Mitigation Requirements." In addition, the requirements for a Preconstruction Meeting shall be noted on all construction documents.
Prior to the commencement of work, a Preconstruction Meeting (Pre-con) shall be conducted and include the City of San Diego's Mitigation Monitoring Coordination (MMC) Section, Resident Engineer, Building Inspector, Project Biologist/Archaeologist/Paleontologist, Applicant and other parties of interest.

Evidence of compliance with other permitting authorities is required, if applicable. Evidence shall include either copies of permits issued, letters of resolution issued by the Responsible Agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the ADD Environmental Designee.

10.2 LAND USE

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department during construction. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

LU-1 Prior to the issuance of any grading permits and/or the first pre-construction meeting, the owner/permittee shall submit evidence to the ADD of the Entitlements Division verifying that a qualified biologist has been retained to implement the biological resources mitigation program as detailed below:

A. Prior to the first pre-construction meeting, the applicant shall provide a letter of verification to the ADD of the Entitlements Division stating that a qualified Biologist, as defined in the City of San Diego Biological Resource Guidelines (BRG), has been retained to implement the revegetation plan.

B. At least thirty days prior to the pre-construction meeting, a second letter shall be submitted to the MMC section, which includes the name and contact information of the Biologist and the names of all persons involved in the Biological Monitoring of the project.

C. At least thirty days prior to the pre-construction meeting, the qualified Biologist shall verify that any special reports, maps, plans and time lines, such as but not limited to, revegetation plans, plant relocation requirements and timing, avian or other wildlife protocol surveys, impact avoidance areas or other such information has been completed and updated.

D. The qualified biologist (project biologist) shall attend the first preconstruction meeting.

LU-2 In addition the following mitigation measures related to the MHPA Land Use Adjacency Guidelines shall be implemented:

A. Prior to initiation of any construction-related grading, the construction foreman shall discuss the sensitive nature of the adjacent habitat with the crew and subcontractor.

B. The limits of grading shall be clearly delineated by a survey crew prior to brushing, clearing or grading. The project biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance within and surrounding sensitive habitats as shown on the approved Exhibit A. The limits of grading shall be defined with silt fencing or
orange construction fencing and checked by the biological monitor before initiation of construction grading.

C. No invasive non-native plant species shall be introduced into areas adjacent to the MHPA. Landscape plans shall not contain invasive, non-native species.

D. All lighting adjacent to the MHPA shall be shielded, unidirectional, low pressure sodium illumination (or similar) and directed away from preserve areas using appropriate placement and shields.

E. All construction activities (including staging areas and/or storage areas) shall be restricted to the development area as shown on the approved Exhibit A. No equipment maintenance shall be conducted within or near the adjacent open space and/or sensitive areas and shall be restricted to the development area as shown on the approved Exhibit A. The project biologist shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved Exhibit A.

F. Natural drainage patterns shall be maintained as much as possible during construction. Erosion control techniques, including the use of sandbags, hay bales, and/or the installation of sediment traps, shall be used to control erosion and deter drainage during construction activities into the adjacent open space. Drainage from all development areas adjacent to the MHPA shall be directed away from the MHPA, or if not possible, must not drain directly into the MHPA, but instead into sedimentation basins, grassy swales, and/or mechanical trapping devices as specified by the City Engineer.

G. No trash, oil, parking or other construction related activities shall be allowed outside the established limits of grading. All construction related debris shall be removed off-site to an approved disposal facility.

LU-3 Should construction occur during the breeding season of the coastal California gnatcatcher (March 1 through August 15), and least Bell’s vireo (March 15 and September 15), the following mitigation measures shall be required and implemented:

A. COASTAL CALIFORNIA GNATCATCHER (Federally Threatened). 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:

1. 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 coastal California gnatcatchers are present, then the following conditions must be met:

a. Between March 1 and August 15, no clearing, grubbing, or grading of occupied coastal California gnatcatcher habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a Qualified Biologist; and

b. 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 coastal California 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

c. 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.

2. 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:

   a. 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.

   b. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

B. LEAST BELL’S VIREO (State Endangered/Federally Endangered) - Prior to the issuance of any grading permit, the City Manager (or appointed designee) shall verify that the following project requirements regarding the least Bell’s vireo are shown on the construction plans:

No clearing, grubbing, grading, or other construction activities shall occur between March 15 and September 15, the breeding season of the least Bell’s vireo, until the following requirements have been met to the satisfaction of the City Manager:

1. A Qualified Biologist (possessing a valid Endangered Species Act Section subject to construction noise levels exceeding 60 decibels [db(a)] hourly average for the presence of the least Bell’s vireo. Surveys for the least Bell’s vireo 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 the least Bell’s vireo are present, then the following conditions must be met:

   a. Between March 15 and September 15, no clearing, grubbing, or grading of occupied least Bell’s vireo habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a Qualified Biologist; and

   b. Between March 15 and September 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 least Bell’s vireo 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

c. 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 least Bell’s vireo. 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 (September 15).

* 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.

2. If least Bell’s vireo 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 15 and September 15 as follows:

a. If this evidence indicates the potential is high for least Bell’s vireo to be present based on historical records or site conditions, then condition A.III shall be adhered to as specified above.

b. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

10.3 TRAFFIC AND CIRCULATION

The Casa Mira View project shall provide improvements to intersections and street segments to mitigate direct or cumulative impacts to these locations. Figure 4.2-8 shows the locations and description of the improvements to be provided by the project. The mitigation measures required by the project are discussed below.
Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Mira Mesa Boulevard and Black Mountain Road. This mitigation would reduce impacts, to the intersection Mira Mesa Boulevard and Black Mountain Road, to below a level of significance and would partially mitigate the project’s significant impacts to the Mira Mesa Boulevard street segment from Westview Parkway to Black Mountain Road.

For the direct and cumulatively significant impacts along the Mira Mesa Boulevard street segment, between Westview Parkway and Black Mountain Road, unmitigable impacts would result. To fully mitigate for the project’s impact, the existing road would require widening to 8 lanes from its current configuration of 7 lanes. Further widening of this segment of Mira Mesa Boulevard would require eminent domain by the City to remove existing structures along this street segment, including private commercial businesses. As such it is considered infeasible and would remain unmitigated. Implementation of mitigation measures TRAF-1 would improve the traffic conditions for street segments on Mira Mesa Boulevard; however, not to a level below significance.

Prior to the issuance of a building permit for the second building (811th residential dwelling unit), the applicant shall assure, to the satisfaction of the City Engineer, construction of a third northbound and a third southbound thru lanes and transitions on Black Mountain Road from Mercy Road transitioning to four lanes prior to the Penasquitos Canyon Creek Bridge. This mitigation would fully mitigate the project’s impacts to the intersection of Mercy Road and Black Mountain Road and partially mitigate the project’s significant impacts to the Black Mountain Road (Mercy Road to Park Village Drive) street segment.

To fully mitigate for the project’s significant impact along this roadway segment, a full 6-lane widening of the entire segment from Mercy Road to Park Village Drive would be required. However, because full widening would require bridge widening, elimination of the existing planted median, and relocation of a major water line, the full widening is not feasible. Therefore, the applicant shall provide feasible mitigation, that is, 6-lane widening of Black Mountain Road, for approximately 960 feet north of Mercy Road, until the existing Black Mountain Road bridge.

Approximately 290 feet of Black Mountain Road from the Penasquitos Canyon Creek Bridge to Park Village Drive would not be widened to 6-lanes and would remain unmitigated.

Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Black Mountain Road and Hillery Drive. This mitigation would reduce impacts, to the Black Mountain Road and Hillery Drive intersection, to below a level of significance.

Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, widening of eastbound and westbound approaches and assure an additional westbound right-turn lane at the intersection of Black Mountain Road and Gold Coast Drive. This mitigation would reduce impacts, to the intersection of Gold Coast Drive and Black Mountain Road, to below a level of significance.
Prior to the issuance of a building permit for the first residential dwelling unit, the project applicant shall either provide a fair-share contribution of $1,572,000 towards the construction of the I-15 ‘managed lanes south segment’ project or provide a fair share contribution distributed by building and totaling $1,572,000 (in 2008 dollars) in the following manner: Prior to the issuance of a building permit for the first residential building permit, the applicant shall provide a fair-share contribution of $700,000 (in 2008 dollars). Prior to the issuance of a building permit for the second building (811th residential unit), the applicant shall provide a fair-share contribution of $700,000 (in 2008 dollars). Prior to the issuance of a building permit for the third building (1,621th residential unit), the applicant shall provide a fair-share contribution of $172,000 (in 2008 dollars) towards the construction of the I-15 ‘managed lanes south segment’ project. This contribution is to be paid subject to the satisfaction of the City Engineer. The fair-share contribution would partially mitigate the Mira Mesa Boulevard/ I-15 SB ramp cumulative impact and the Mira Mesa Boulevard street segment from I-15 onramps to Westview Parkway; however, there is no certain method of determining whether or not the fair-share contribution to Caltrans would actually fully mitigate the project’s cumulative contribution to significant impacts at this intersection, and if construction of the managed lanes south segment project is not completed by Caltrans, impacts would remain unmitigated.

Prior to the issuance of a building permit for the first residential dwelling unit, the applicant shall assure, to the satisfaction of the City Engineer, an extension of the westbound dual-left turn lanes on Mira Mesa Boulevard as well as provide striping, signing, and modifications to increase the storage for the southbound left turn lanes on Westview Parkway in order to increase the capacity of this intersection and increase the capacity of street segments on Mira Mesa Boulevard. This mitigation measure would partially reduce impacts to the Mira Mesa Boulevard street segment from the I-15 on-ramps to Westview Parkway.

10.4 AIR QUALITY

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department during construction. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

During the construction phase, contractors shall maintain equipment and vehicle engines in good condition and in proper tune per manufacturers’ specifications. Construction equipment utilized for grading and excavation shall be equipped with a diesel oxidation catalyst of reducing NOx emissions by 40 percent. As feasible, contractors shall utilize electricity from power poles rather than temporary diesel or gasoline generators. Heavy-duty haul/delivery trucks shall be prohibited from idling in excess of five minutes, both on and off site, to be consistent with State law.

Construction activity that affects traffic flow on the arterial system shall be limited to off-peak hours, as feasible. In addition, construction parking shall be configured to minimize traffic interference.

No feasible mitigation measures are available to reduce long-term operational PM10, CO, and VOC emissions to less than significant levels. The majority of the operational air quality impacts
are a result of the estimated 11,088 average daily trips generated by the project (USA 2008a). While the project has included shuttle services, which would serve to reduce operational emissions, the amount of reduction is difficult to quantify. Also, it is not feasible for the applicant to require emission control devices be implemented on private vehicles associated with the project. There are no other feasible mitigation measures to reduce mobile source emissions to less than significant levels. Therefore, the project would result in a significant and unavoidable regional operations impact from PM$_{10}$, CO, and VOC emissions.

10.5 PUBLIC FACILITIES AND SERVICES

The project shall incorporate or comply with the measures provided below to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future project plans have incorporated or complied with the following measures:

**Entitlements Plan Check**

PFS-1 Prior to the issuance of any construction permit, including but is not limited to, demolition, grading, building or any other construction permit, the Assistant Deputy Director (ADD) Environmental Designee shall verify that the all the requirements of the Refuse & Recyclable Materials Storage Regulations and all of the 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.

PFS-2 The construction documents shall include a waste management plan that addresses the following information and elements for demolition, construction, and occupancy phases of the project as applicable:

(a) tons of waste anticipated to be generated
(b) material type of waste to be generated
(c) source separation techniques for waste generated
(d) how materials will be reused on site
(e) name and location of recycling, reuse, or landfill facilities where waste will be taken if not reused on site
(f) a "buy recycled" program
(g) how the project will aim to reduce the generation of construction/ demolition debris
(h) a plan of how waste reduction and recycling goals will be communicated to subcontractors
(i) a time line for each of the three main phases of the project as stated above
(j) a list of required progress and final inspections by City staff.

PFS-3 The plan shall strive for a goal of 50% waste reduction.

PFS-4 The plan shall include specific performance measures to be assessed upon the completion of the project to measure success in achieving waste minimization goals.
The Plan shall include notes requiring the Permittee to notify MMC and ESD when:

(a) a demolition permit is issued
(b) demolition begins on site
(c) inspections are needed. The permittee shall arrange for progress inspections, and a final inspection, as specified in the plan and shall contact both MMC and ESD to perform these periodic site visits during demolition and construction to inspect the progress of the project's waste diversion efforts.

When Demolition ends, notification shall be sent to:
Mitigation Monitoring Coordination (MMC) Environmental Review Specialist
9601 Ridgehaven Court, Ste. 320, MS 1102 B
San Diego, CA 92123 1636
(619) 980 7122

Development Service Department, Environmental Services Department (ESD)
9601 Ridgehaven Court, Ste. 320, MS 1103 B
San Diego, CA 92123 1636
(858) 627-3303

Prior to the issuance of any grading or building permit, the applicant shall receive approval, in writing, from the ADD of Entitlements Division, environmental designee (MMC) that the waste management plan has been prepared, approved, and implemented. Also prior to the issuance of any grading or building permit, the applicant shall submit written evidence to the ADD that the final Demolition/Construction report has been approved by MMC and ESD. This report shall summarize the results of implementing the above Waste Management Plan elements, including: the actual waste generated and diverted from the project, the waste reduction percentage achieved, and how that goal was achieved, etc.

A. Pre Construction Meeting

1. Demolition Permit - Prior to issuance of any demolition permit, the permittee shall be responsible to obtain written verification from MMC indicating that the permittee has arranged a preconstruction meeting to coordinate the implementation of the MMRP. The Precon Meeting that shall include: the Construction Manager, Demolition/Building/Grading Contractor; MMC; and ESD and the Building Inspector and/or the Resident Engineer (RE) (whichever is applicable) to verify that implementation of the waste management plan shall be performed in compliance with the plan approved by Entitlements Division and the San Diego Environmental Services Department (ESD), to ensure that impacts to solid waste facilities are mitigated to below a level of significance.

2. At the Precon Meeting, the Permittee shall submit three (3) reduced copies (11x17 inches) of the approved waste management plan, which two (2) copies are to be distributed to MMC and one (1) ESD.
3. Prior to the start of demolition, the Permittee and/or the Construction Manager shall submit a construction/demolition schedule to MMC and ESD.

a. Grading and Building Permit - Prior to issuance of any grading or building permit, the Permittee shall be responsible to arrange a preconstruction meeting to coordinate the implementation of the MMRP. The Precon Meeting shall include: the Construction Manager, Building/Grading Contractor, MMC, ESD, and the Building Inspector and/or the Resident Engineer (RE) (whichever is applicable) to verify that implementation of the waste management plan shall be performed in compliance with the plan approved by Entitlement Division and the ESD, to ensure that impacts to solid waste facilities are mitigated to below a level of significance.

4. The Permittee and/or 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.

5. Within 30 days after the completion of the implementation of the MMRP, 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.

6. Prior to final clearance of any demolition permit, issuance of any grading or building permit, release of the grading bond and/or issuance of any Certificate of Occupancy, the permittee shall provide documentation to the ADD of the Entitlements Division that the waste management plan has been effectively implemented.

10.6 NOISE

The following measures shall be implemented to reduce exterior noise levels for multifamily residences during construction, to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans incorporate or comply with the following measures:

NOI-1  All construction equipment shall be equipped with mufflers and other suitable noise attenuation devices. This would reduce construction noise levels by at least 5 dB(A).

NOI-2  Grading and construction contractors shall use quieter equipment as opposed to noisier equipment (such as rubber-tired equipment rather than track equipment).

NOI-3  Equipment staging areas shall be located on the southeastern portion of the project site, as far away as possible from single-family residences and the Willard B. Hage Elementary School.
NOI-4 During building construction, the construction contractor shall implement sound attenuation blankets with a Sound Transmission Class rating of ten or more along the northern portion of the project site. The sound attenuation blankets shall break the line-of-sight between construction activities and the single-family residences adjacent to the project site. The sound attenuation blankets shall remain in place as long as construction activity is located within 175 feet of the single-family residences. This would reduce construction noise levels by 10 dB(A) at single-family residences located north of the project site.

NOI-5 During building construction, a five-foot temporary noise barrier (e.g., solid wood) shall be constructed by the construction contractor along the western portion of the project site such that line-of-sight between construction activities and the Willard B. Hage Elementary School is blocked. The five-foot noise barrier shall remain in place as long as construction activity is located within 175 feet of the elementary school. This would reduce construction noise levels by 5 dB(A) at the Willard B. Hage Elementary School.

NOI-6 The construction contractor shall establish a noise disturbance coordinator. The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., starting too early in the day, bad muffler, etc.) and shall be required to implement measures such that the complaint is resolved to the satisfaction of the City Engineering Department. Signs posted at the construction site shall list the telephone number for the disturbance coordinator.

NOI-7 During building construction, a five-foot temporary noise barrier (e.g. solid wood) shall be constructed such that the line-of-sight is blocked between construction activity and new dwelling units. The five-foot noise barrier that blocks the line-of-sight from construction activity to new dwelling units constructed on the project site shall remain in place until buildings are constructed during phases 2 and 3.

NOI-8 Lease agreements for residents occupying Phase 1 and Phase 2 dwelling units shall include notification of on-going phases 2 and 3 construction activity.

NOI-9 An eight-foot, permanent noise barrier (e.g., earth berm, solid wall, or some combination therefore) shall be constructed between the northeastern recreation area and 1-15.

With implementation of NOI-1 through NOI-6, construction noise levels at the single-family residences north of the project site, the Willard B. Hage Elementary School, and single-family residences northwest of the project would be reduced to below the 75 dB(A) construction noise threshold. Therefore, construction noise would result in a less-than-significant impact to off-site receptors after implementation of mitigation.

Mitigation measures NOI-1 and NOI-7 would each reduce construction noise levels at Phase 1 dwelling units by 5 dB(A), reducing the noise levels at Building 1 to 79 dB(A). This would exceed the 75 dB(A) significance threshold and, as such, construction noise would result in a short-term significant and unavoidable impact to new on-site residences.
Mitigation measure NOI-9 would reduce exterior noise levels at the northeastern recreational area by approximately 7 dB(A). This would result in maximum exterior noise levels of approximately 59.6 dB(A); which is below the 60 dB(A) significance threshold. Therefore, impacts from the northeastern recreational area would be reduced to less than significant levels.

10.7 PALEONTOLOGY

The following measures shall be implemented to reduce potential impacts to paleontological resources, to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

PALEO-1 The following shall be implemented:

I. Prior to Permit Issuance

A. Entitlement Division Plan Check

1. Prior to Notice to Proceed (NTP) for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first preconstruction meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological monitoring program, as defined in the City of San Diego Paleontology Guidelines.

2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.

3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

B. PI Shall Attend Precon Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Precon Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Precon Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.

   a. If the PI is unable to attend the Precon Meeting, the Applicant shall schedule a focused Precon Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.

2. Identify Areas to be Monitored

Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).

3. When Monitoring Will Occur

   a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.

   b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor Shall be Present During Grading/Excavation/Trenching

1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that
could result in impacts to formations with high and moderate resource sensitivity. The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities.

2. The monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (Notification of Monitoring Completion), and in the case of ANY discoveries. The RE shall forward copies to MMC.

3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.

B. Discovery Notification Process

1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.

2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.

3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.

C. Determination of Significance

1. The PI shall evaluate the significance of the resource.
   a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.
   b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
   c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to
monitor the area without notification to MMC unless a significant resource is encountered.

d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

IV. Night and/or Weekend Work

A. If night and/or weekend work is included in the contract

1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the precon meeting.

2. The following procedures shall be followed.

a. No Discoveries

In the event that no discoveries were encountered during night and/or weekend work, The PI shall record the information on the CSVR and submit to MMC via fax by 8AM on the next business day.

b. Discoveries

All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.

c. Potentially Significant Discoveries

If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.

d. The PI shall immediately contact MMC, or by 8AM on the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.

B. If night work becomes necessary during the course of construction

1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.

2. The RE, or BI, as appropriate, shall notify MMC immediately.

C. All other procedures described above shall apply, as appropriate.

V. Post Construction

A. Preparation and Submittal of Draft Monitoring Report
1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Paleontological Guidelines which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring.

   a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.

   b. Recording Sites with the San Diego Natural History Museum

      The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City’s Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.

2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.

3. The PI shall submit revised Draft Monitoring Report to MMC for approval.

4. MMC shall provide written verification to the PI of the approved report.

5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.

B. Handling of Fossil Remains

1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.

2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate.

C. Curation of fossil remains: Deed of Gift and Acceptance Verification

1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.

2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
D. Final Monitoring Report(s)

1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.

2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC, which includes the Acceptance Verification from the curation institution.

10.8 BIOLOGICAL RESOURCES

The following measures shall be implemented to reduce potential impacts to biological resources to the satisfaction of the City Development Services Department. The City Development Services Department shall verify that future development plans have incorporated or complied with the following measures:

**BIO-1** To avoid direct impacts to the California horned lark, which nests on the ground and could nest on site, nesting bird surveys shall be conducted within 72 hours of any vegetation clearing if development occurs between March 15 and August 15. If occupied nests are present within 500 feet of the construction area, impacts to vegetation shall be avoided until the juvenile birds have fledged.

In addition, implementation of mitigation measures LU-1, LU-2 and LU-3 (see Section 4.1, Land Use) would reduce off-site short-term indirect significant impacts to special status wildlife species and sensitive vegetation communities to below a level of significance.

Implementation of mitigation measures BIO-1, BIO-2, and BIO-3 would reduce the potential significant impact on nesting birds to below a level of significance:

**BIO-2** If the site has a potential to support nests and nesting raptors are present during grading and/or construction activities, compliance with the Migratory Bird Treaty Act/Section 3503 would preclude the potential for direct impacts.

**BIO-3** If there is a potential for indirect noise impacts to nesting raptors, prior to any grading within the development area during the raptor breeding season (January 15 through August 15) the biologist shall ensure that no raptors are nesting. If construction occurs during the raptor breeding season a preconstruction survey shall be conducted and no construction shall be allowed within 300 to 500 feet of any identified nest(s) until the young fledge. Should the biologist determine that raptors are nesting, an active nest shall not be removed until after the breeding season.

The following mitigation measure would reduce potential off-site impacts to nesting birds along the Black Mountain Road off-site traffic improvement area to less than significant:

**BIO-4** To avoid indirect impacts to raptors nesting in adjacent trees east of the work area, a nesting raptor survey shall be conducted by a qualified biologist within 72 hours prior to the start of grading if construction occurs between January 15 and August 15. If occupied nests are present within 500 feet of the construction area, construction must be avoided to the 500-foot buffer area around the nest until the juvenile birds have fledged.
WHEREAS, SCRIPPS MESA DEVELOPERS, LLC, Subdivider/Applicant, and JOHN D. LEPPERT, Engineer, submitted an application with the City of San Diego for a Vesting Tentative Map No. 481936 and Easement Vacation No. 368513, for the subdivision of land to develop a condominium project with 1,848 condominium units. The project site is located on the east side of Westview Parkway, north of Mira Mesa Boulevard, legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder, in the RM-3-7 zone which is proposed to be rezoned to the RM-3-8 zone in the Mira Mesa community plan area; and

WHEREAS, the Map proposes the subdivision of a 41.31 acre site into six lots for condominium development; and

WHEREAS, Environmental Impact Report No. 91647 was prepared in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, the project complies with the requirements of a preliminary soils and/or geological reconnaissance report pursuant to the Subdivision Map Act and Section 144.0220 of the Municipal Code of the City of San Diego; and

WHEREAS, the subdivision is a condominium project as defined in Section 1350 et seq. of the Civil Code of the State of California and filed pursuant to the Subdivision Map Act. The total number of condominium dwelling units is 1,848; and

WHEREAS, on October 2, 2008, the Planning Commission of the City of San Diego considered Vesting Tentative Map, No. 481936 and Easement Vacation No. 368513, and pursuant to Resolution No. 4449-PC voted to recommend City Council approval of the map; and

WHEREAS, on HEARING DATE, the Council of the City of San Diego considered Vesting Tentative Map, No. 481936 and Easement Vacation No. 368513, and pursuant to Sections 125.0440 and 125.0430 of the Municipal Code of the City of San Diego and Subdivision Map Act Section 66428, received for its consideration written and oral presentations, evidence having been submitted, and heard testimony from all interested parties at the public hearing, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego, that it adopts the following findings with respect to Vesting Tentative Map, No. 481936 and Easement Vacation No. 368513:
1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan (Land Development Code Section 125.0440.a and State Map Action Sections 66473.5, 66474(a), and 66474(b)).

2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code (Land Development Code Section 125.0440.b).

3. The site is physically suitable for the type and density of development (Land Development Code Section 125.0440.c and State Map Act Sections 66474(c) and 66474(d)).

4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat (Land Development Code Section 125.0440.d and State Map Act Section 66474(e)).

5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare (Land Development Code Section 125.0440.e and State Map Act Section 66474(f)).

6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision (Land Development Code Section 125.0440.f and State Map Act Section 66474(g)).

7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (Land Development Code Section 125.0440.g and State Map Act Section 66473.1).

8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources (Land Development Code Section 125.0440.h and State Map Act Section 66412.3).

9. The property contains an easement which must be vacated to implement the Final Map in accordance with San Diego Municipal Code 125.0430.

That said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that, based on the Findings hereinbefore adopted by the City Council, Vesting Tentative Map No. 481936 and Easement Vacation No. 368513, is
hereby granted to SCRIPPS MESA DEVELOPERS, LLC, Subdivider/Applicant, subject to the following conditions:

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), portions of Public Sewer and Storm Drain Easement per Document Recorded on August 26, 1977 as Instrument No. 77-351287, or O.R., portions of Drainage, Water Access and Sewer Facilities Easement dedicated per Map No. 7988, portions of Antenna Easement per Document recorded on November 23, 1971, as Instrument No. 71-273372, of O.R., portions of Sewer and Water Easement per Document recorded on November 23, 1977, as Instrument No. 77-486328, O.R., portions of Public Utilities Easement per Document recorded on September 21, 1992, as Instrument No. 1992-0597862, of O.R., portions of Water and Sewer Easement dedicated per Map No. 7988, located within the project boundaries as shown in Vesting Tentative Map No. 481936, shall be vacated, contingent upon the recordation of the approved final map for the project and That said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference:

1. There is no present or prospective public use for the easement, either for the facility or purpose for which it was originally acquired or for any other public use of a like nature that can be anticipated.

2. The public will benefit from the action through improved utilization of the land made available by the abandonment.

3. The abandonment is consistent with the Mira Mesa Community Plan.

4. The public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the abandonment or the purpose for which the easement was acquired no longer exists.

GENERAL

1. This Vesting Tentative Map will expire [INSERT DATE - 3 YEARS FROM DECISION DATE].

2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.

3. Prior to the Vesting Tentative Map expiration date, a Final Map to consolidate the existing lots into six lots shall be recorded in the Office of the County Recorder.

4. The Final Map shall conform to the provisions of Planned Development Permit No. 294375 and Site Development Permit No. 294373.
5. The Subdivider 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, including, but not limited to, any 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 Subdivider of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Subdivider shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees, including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. In the event of such election, Subdivider 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 Subdivider 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 Subdivider shall not be required to pay or perform any settlement unless such settlement is approved by Subdivider

AFFORDABLE HOUSING

6. Prior to the recordation of the Final Map, the Subdivider shall enter into an affordable housing agreement with the Housing Commission to provide affordable housing units in compliance with the Affordable Housing Requirements of the City’s Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code).

ENGINEERING

7. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.

8. The Subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance.

9. Prior to the issuance of any construction permit, the Subdivider shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

10. Prior to the issuance of any construction permit the Subdivider shall incorporate and show the type and location of all post-construction Best Management Practices (BMP’s) on the final construction drawings, in accordance with the approved Water Quality Technical Report.
11. The Final Map shall comply with the provisions of Planned Development Permit No. 294375 and Site Development Permit No. 294373.

12. The drainage system proposed for this subdivision, as shown on the approved vesting tentative map is subject to approval by the City Engineer, including the realigned storm drain and its appurtenances for maintenance.

13. Prior to the issuance of grading permits, a geotechnical investigation report shall be required that specifically addresses the proposed grading plans and cites the City's account number and Drawing number. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over-excavation depth, and limits of remedial grading.

14. The Subdivider shall obtain a grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

15. Compliance with all conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map.

16. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01(NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.

17. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99 08 DWQ.

18. All driveways and curb openings shall comply with City Standard Drawings G-14A, G-16 and SDG-100.

19. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
20. The Subdivider shall ensure that all existing onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The Subdivider shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.

21. Conformance with the “General Conditions for Tentative Subdivision Maps,” filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. RR-297376.

MAPPING

22. “Basis of Bearings” means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).

23. "California Coordinate System means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is “Zone 6,” and the official datum is the “North American Datum of 1983.”

24. The Final Map shall:

   a. Use the California Coordinate System for its “Basis of Bearing” and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.

   b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.
WASTEWATER AND WATER

25. The Subdivider shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved Tentative Map will require modification based on the accepted sewer study.

26. The Subdivider shall abandon the existing onsite public sewer main in the south portion of this lot or it will be converted to private, satisfactory to the Director of Public Utilities. All associated public sewer easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.

27. The Subdivider shall provide evidence, satisfactory to the Director of Public Utilities, indicating that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of private sewer facilities that serve more than one ownership.

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

29. The Subdivider shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

30. All onsite sewer facilities shall be private.

31. The Subdivider shall grant adequate water easements, including vehicular access to each appurtenance; including meters, blow offs, valves, fire hydrants, et cetera, for all public water facilities that are not located within fully improved public rights of way, satisfactory to the Director of Public Utilities.

32. Prior to recording the final map, the Subdivider shall properly abandon the portions of existing 12-inch diameter water main per City drawing number 16126-D which traverses the site in a manner satisfactory to the Director of Public Utilities.

33. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two (2) fire hydrants or thirty (30) dwelling units are located on a dead end main then the Subdivider shall install a redundant water system satisfactory to the Director of Public Utilities.

34. The Subdivider shall design and construct all irrigation systems to utilize reclaimed water in a manner satisfactory to the Director of Public Utilities.

35. The Subdivider shall provide CC&R's for the operation and maintenance of on site private water facilities that serve or traverse more than one lot or unit.
36. The Subdivider agrees to design and construct all proposed public water facilities, including services, meters, and easements in accordance with established criteria in the most current edition of the City San Diego Water Facility Design Guidelines and regulations, standards, and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private.

37. Prior to the approval of any public improvement drawings, the Subdivider shall provide acceptable potable and reclaimed water studies satisfactory to the Director of Public Utilities. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies.

INFORMATION:

- The approval of this Vesting Tentative Map by the Council of the City of San Diego does not authorize the Subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).

- If the Subdivider makes any request for new water and sewer facilities, including services, fire hydrants, and laterals, then the Subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.

- Subsequent applications related to this Vesting Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Vesting Tentative Map, may protest the imposition within 90 days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.

- Where in the course of development of private property, public facilities are damaged or removed the property owner shall at no cost to the City obtain the
required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer. Municipal Code Section 142.0607.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF SAN DIEGO, CALIFORNIA, ON HEARING DATE [IN CAPS].

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By ______________________________

Shirley R. Edwards
Chief Deputy City Attorney

ATTY/SEC. INITIALS
DATE
R- INSERT
Reviewed by John S. Fisher

Job Order No. 425739
WHEREAS, Scripps Mesa Developers, LLC, Owner/Permittee, filed an application with the City of San Diego for a Planned Development Permit No. 294375 and Site Development Permit No. 294373 to subdivide and develop a condominium project with 1,848 condominium units known as the Casa Mira View project, located on six parcels along the east side of Westview Parkway between Dauntless Street and Mira Mesa Boulevard in the Mira Mesa community, and legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder, in the Mira Mesa Community Plan area, in the RM-3-7 zone which is proposed to be rezoned to the RM-3-8 zone; and

WHEREAS, on October 2, 2008, the Planning Commission of the City of San Diego considered Planned Development Permit No. 294375 and Site Development Permit No. 294373, and pursuant to Resolution No. 4449-PC voted to recommend City Council approval of the permits; and

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

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Planned Development Permit No. 294375 and Site Development Permit No. 294373:

Planned Development Permit - Section 126.0604

A. Findings for all Planned Development Permits
1. **The proposed development will not adversely affect the applicable land use plan.** The proposed multi-family development on the 41.31 acre site is designated for Residential use by the Mira Mesa Community Plan and allows residential development at the densities allowed by the existing RM-3-8 Zone. The proposed project site is located within the Mira Mesa Community Plan area and designated for Medium-high density residential development at 30-45 dwelling units per net acre. The project as proposed conforms to the density in the community plan. With the approval of the rezone, the project would be also consistent with the approved development agreement. The project will help satisfy a variety of goals of the applicable land use plans. The project will increase the supply of housing in the community within walking distance of transit, shopping, and employment opportunities. Development of the property would not conflict with goals of the community plan relative to topography as the project site has been previously graded. Being determined the project is consistent with the Progress Guide and General Plan, the Mira Mesa Community Plan, the regulations of the RM-3-8 Zone and the Planned Development Permit regulations, the proposed development will not adversely affect the applicable land use plan.

2. **The proposed development will not be detrimental to the public health, safety, and welfare.** The proposed development is included in a Development Agreement, Doc. No. 00-17178, filed November 14, 1988 and as such has or will provide significant public benefits which would not have occurred otherwise. The proposed development will construct necessary sewer and water facilities to serve the residents of the development; will enter into a Maintenance Agreement for the ongoing permanent BMP maintenance; will comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01(NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. The development will also provide for the health, safety, and welfare of the residents by constructing all buildings in accordance with current construction standards and codes. All structures constructed will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. As such the proposed development will not be detrimental to the public health, safety, and welfare.

3. **The proposed development will comply with the regulations of the Land Development Code.** The proposed development complies with the regulations of the RM-3-8 Zone and site-specific development regulations for the property. No deviations or variances are required to approve the proposed project. The proposed development complies with all relevant regulations of the Land Development Code. Specific conditions of approval require the continued compliance with all relevant regulations of the City of San Diego effective for this site and have been written as such into Planned Development Permit No. 294375 and Site Development Permit No. 294373. Development of the property will meet all requirements of these regulations. Concept plans for the project identify all other development criteria in effect for the site. All relevant regulations shall be complied with at all times for the life of the project. In these ways the proposed development will comply with the applicable and relevant regulations of the Land Development Code.
4. **The proposed development, when considered as a whole, will be beneficial to the community.** The project will provide several significant features, amenities and improvements in the community. The project will add 1,848 housing units to the housing stock of the City of San Diego at a time in the history of the city when there is a housing shortage and in a community with a very low vacancy rate. The city currently has a very limited supply of land designated and zoned for medium to high density multi-family housing. Increasing the housing supply will be particularly beneficial in the Mira Mesa area because of the large and expanding employment base in the area. This site has long been identified in the Community Plan as the location where density should be located. This proposal will help to alleviate the shortage of multi-family housing opportunities. This project will also provide for affordable housing opportunities on-site. Housing near the many employment sites in Mira Mesa will aid in reducing automobile congestion, particularly during peak travel hours. The project will also create public areas within the property to promote pedestrian activity. Pedestrian walkways have been provided around the entire perimeter of the project which creates opportunities for the public display of art. Finally, the developer will be providing much needed FBA funding for the completion of identified public improvements. Furthermore, of the 1,848 units fully ten percent or 185 dwelling units will be affordable to persons earning no more than sixty-five percent of the County average median income. Thus the development of the project will materially benefit the city by providing both housing units during a shortage of supply and by providing affordable housing to persons of special need. The resulting benefits of the project will be positive for the community and City of San Diego.

5. **Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.** The project includes several deviations, all of which provide a more desirable project. The deviations are as follows:

a. A deviation to increase the maximum allowed height of the structures. The maximum height proposed with this project is isolated at several locations along the buildings at 64 feet 7 inches above finish grade where 50 feet is otherwise allowed. Due to the existing grading of the site to control storm water on-site during the years of vacancy, when the buildings are measured from the pre-existing ground, the maximum height would be as much as 80 feet or thirty feet above the maximum allowed in the RM-3-8 Zone. While the height of the flat roofed buildings is much closer to the 50 foot requirement, this increased height in limited areas on the site at specific locations of the building will permit greater flexibility for the design of the roofline, allow for more articulation of the parapets and turrets above the roofline, and an opportunity to increase the amount of open space being provided on the ground by the project. Allowing the deviation to the maximum height also results in an increase of the overall setbacks of the proposed buildings to the adjacent property lines. While the entire project meets the required setback requirements, the increase in allowable building height enables the project to greatly exceed the setback requirements. This further permits greater opportunities for landscaping within the project and along the adjacent
proposed the development As for a result the City and d. A deviation to develop less than the required thirty-three percent of the allowable floor area ratio for structured parking. The efficiency of the architectural plan approved for the project results in structured parking that occupies less than the required minimum thirty-three percent of the allowable FAR. In addition, the structured parking will not be visible from any public vantage point. The residential buildings will surround the parking structures. Approving the project with a lower allocation of floor area ratio devoted to the required parking structures will result in greater amount of usable open space available to residents and visitors to the project. The project will provide a maximum of twenty-seven percent of the available floor area ratio for structured parking.

c. A deviation to allow an eight foot high noise wall within the southerly side yard setback where a maximum height of six feet is otherwise permitted. This setback area is very wide and is measured at fifty-nine feet in width. The noise wall is necessary to protect recreational uses that will be constructed and occur in this location within this setback area.

d. A deviation to allow the construction of carports for all the parking stalls located on the top deck of each parking structure rather than providing trees in raised containers to meet the tree distribution requirements for parking lots required in the City-wide Landscape Regulations. The purpose of providing trees within parking lots is to create shading of the pavement to reduce the heat island effect of large expanses of pavement. Carports will provide a superior quantity of shading on the parking structure deck when compared to living trees. Trees installed in containers on the top deck of the parking structure will never attain a height and breadth capable of providing an equivalent amount of shade as will be permanently provided by the carports.

As a result of the approved deviations and other design features of the project, the proposed project conforms to the overall policies, regulations and purpose and intent of the Planned Development regulations. The design will result in a more desirable project for the City and the community than would be realized through the strict application of the development regulations at this location.
A. Findings for all Site Development Permits

1. The proposed development will not adversely affect the applicable land use plan. The proposed multi-family development on the 41.31 acre site is designated for Residential use by the Mira Mesa Community Plan and allows residential development at the densities allowed by the existing RM-3-8 Zone. Being determined the project is consistent with the Progress Guide and General Plan, the Mira Mesa Community Plan, the regulations of the RM-3-8 Zone and the Planned Development Permit regulations, the proposed development will not adversely affect the applicable land use plan. Refer to Planned Development Permit Finding No. 1 above for additional detail.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed development is included in a Development Agreement, Doc. No. 00-17178, filed November 14, 1988 and as such has or will provide significant public benefits which would not have occurred otherwise. All structures constructed will be reviewed by professional staff for compliance with all relevant and applicable building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. As such the proposed development will not be detrimental to the public health, safety, and welfare. Refer to Planned Development Permit Finding No. 2 above for additional detail.

3. The proposed development will comply with the applicable regulations of the Land Development Code. The proposed development complies with the regulations of the RM-3-8 Zone and site-specific development regulations for the property. No deviations or variances are required to approve the proposed project. The proposed development complies with all relevant regulations of the Land Development Code. Refer to Planned Development Permit Finding No. 3 above for additional detail.

M. Supplemental Findings—Deviations for Affordable/In-Fill Housing Projects and Sustainable Buildings

1. The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City, and/or the proposed development will materially assist in reducing impacts associated with fossil fuel energy use by utilizing alternative energy resources, self-generation and other renewable technologies (e.g. photovoltaic, wind, and/or fuel cells) to generate electricity needed by the building and its occupants. One hundred eighty-five dwelling units of affordable family housing will be developed as a result of the approval and subsequent construction of the project. One thousand six hundred sixty-three for-sale market rate condominiums will be developed. There will be no discernable distinction between the affordable and market rate units. These project features and goals will provide needed housing and development in an area of the city replete with redevelopment opportunity. The provision of 185 dwelling units affordable to persons at the income range described as sixty-five percent of
the County average median income will contribute in a real and meaningful way towards the goals of providing affordable housing in the City.

2. The development will not be inconsistent with the purpose or the underlying zone. The development of 1,848 dwelling units on the proposed site will be consistent with the regulations of the RM-3-8 Zone and all other regulations and policies of the City of San Diego which zone the site for residential use. The purpose of the RM-3-8 Zone is to allow for the provision and development of multiple unit housing in accordance with specific development regulations of the zone in areas designated by the zoning and community plan for multiple family dwelling units. Development of the site with the project will comply with all relevant regulations of the RM-3-8 Zone.

3. Any proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. The proposed development complies with the Mira Mesa Community Plan which designates the site for multiple dwelling unit development. The proposed deviations are necessary to maximize the use of the land and to provide the highest quality affordable housing development. The deviations are required due to existing infrastructure adjacent to the site and to the limitations of the zoning regulations. The proposed project includes architectural plans with extensive articulation and fenestration. This level of detail is consistent with the purpose and intent of the planned development regulations; however, in order to implement the site plan and architecture at this site; and to maximize the density and intensity of development at the site to contribute to the housing stock of the City of San Diego, the proposed deviations are granted. All other requirements comply with the regulations which apply to the project site in accordance with the Land Development Code.

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

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Planned Development Permit No. 294375 and Site Development Permit.
No. 294373 is granted to Scripps Mesa Developers, LLC, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: MICHAEL AGUIRRE, City Attorney

By

__________________________
Shirley R. Edwards
Deputy City Attorney

ATTY/SEC. INITIALS
DATE
Or.Dept:Clerk
R-INSERT
Form=permitr.frm(61203wct)
Reviewed by John S. Fisher
This Planned Development Permit No. 294375 and Site Development Permit No. 294373 is granted by the Council of the City of San Diego to Scripps Mesa Owner/Permittees, LLC, a California limited liability company, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0600 and 126.0500. The 41.31 acre site is located on the east side of Westview Parkway between Dauntless Street and Mira Mesa Boulevard in the RM-3-7 Zone which is proposed to be rezoned to the RM-3-8 Zone in the Mira Mesa community plan area. The project site is legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for the subdivision of land to develop a condominium project with 1,848 condominium units, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit “A”] dated [INSERT Approval Date], on file in the Development Services Department.

The project shall include:

a. The subdivision of land and development of a condominium project with 1,848 condominium units of which 1,663 dwelling units shall be market rate for sale and 185 dwelling units shall be for sale affordable housing units affordable to persons who earn no more than 65% of the area median income;

b. Four deviations are approved with the project and are described as follows: 1) Maximum building height would be 64 feet 7 inches above the proposed finish grade where 50 feet is otherwise allowed; 2) Develop less than 33% of the minimum required Floor Area Ratio (FAR) for the structured parking. The structured parking FAR would be 27.9%; 3) An eight foot noise wall within the southerly side yard setback, where a
maximum height of six feet is allowed; 4) Allow construction of carports for all parking spaces located on the top deck of each parking structure in lieu of complying with the tree distribution requirements for parking lots.

c. Landscaping (planting, irrigation and landscape related improvements);

d. Off-street parking;

e. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit 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.

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. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

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 modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Construction plans shall be in substantial conformity to Exhibit “A.” No changes, modifications or alterations shall be made 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 have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that 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, including, but not limited to, any 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 are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

13. The mitigation measures specified in the Mitigation Monitoring and Reporting Program, and outlined in Environmental Impact Report No. 91647, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

14. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in Environmental Impact Report No. 91647, satisfactory to the Development Services Department and the City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be complied with, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Land Use/Multiple Species Conservation Program
- Traffic/Circulation
- Air Quality
- Public Facilities and Services
- Noise
- Paleontological Resources
- Biological Resources

15. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City’s costs associated with implementation of permit compliance monitoring.

ENGINEERING REQUIREMENTS:

16. The Permit shall comply with the conditions of the Vesting Tentative Map No. 481936.

LANDSCAPE REQUIREMENTS:

17. Prior to issuance of any construction permits for grading, the Owner/Permittee shall submit landscape construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the Land Development Manual Landscape Standards and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit and Exhibit “A.”
18. Prior to issuance of any construction permits for buildings, the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Land Development Manual, Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A."

19. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/Permittee to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

20. The Owner/Permittee shall maintain all landscape in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.

21. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual, Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

22. If any required landscape, including but not limited to existing or new plantings, hardscape, landscape features, indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee is responsible to repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to a Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

23. No fewer than 3,387 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the Development Services Department.

24. 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.

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

26. The Owner/Permittee shall post a copy of this permit and Tentative Map in the sales office for consideration by each prospective buyer.
27. 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.

28. Prior to the issuance of building permits, the Owner/Permittee shall vary the architectural theme and color palette consistent with the approved Exhibit “A,” satisfactory to the Development Services Director. Actual color selections may vary at the time of paint application in the field.

TRANSPORTATION REQUIREMENTS

29. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Mira Mesa Boulevard and Black Mountain Road.

30. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, widening of eastbound and westbound approaches and assure an additional westbound right-turn lane at the intersection of Black Mountain Road and Gold Coast Drive.

31. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a northbound right-turn lane at the intersection of Black Mountain Road and Hillery Drive.

32. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall provide a fair-share contribution of $75,268 toward improvements at the intersection of Black Mountain Road and Carroll Canyon Road, to the satisfaction of the City Engineer.

33. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall either provide a fair-share contribution of $1,572,000 towards the construction of the I-15 ‘managed lanes south segment’ project or provide a fair-share contribution distributed by building and totaling $1,572,000 (in 2008 dollars) in the following manner: Prior to the issuance of a building permit for the first residential building permit, the Owner/Permittee shall provide a fair-share contribution of $700,000 (in 2008 dollars). Prior to the issuance of a building permit for the second building (811th residential unit), the Owner/Permittee shall provide a fair-share contribution of $700,000 (in 2008 dollars). Prior to the issuance of a building permit for the third building (1621st residential unit), the Owner/Permittee shall provide a fair-share contribution of $172,000 (in 2008 dollars) towards the construction of the I-15 ‘managed lanes south segment’ project. This contribution is to be paid subject to the satisfaction of the City Engineer.

34. Prior to the issuance of a building permit for the second building (811th residential dwelling unit), the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a third northbound and a third southbound thru lanes and transitions on Black
Mountain Road from Mercy Road transitioning to four lanes prior to the Penasquitos Canyon Creek Bridge.

35. Prior to the issuance of a building permit for the first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, an extension of the westbound dual-left turn lanes on Mira Mesa Boulevard as well as provide striping, signing, and modifications to increase the storage for the southbound left turn lanes on Westview Parkway in order to increase the capacity of this intersection and increase the capacity of street segments on Mira Mesa Boulevard.

36. Prior to the issuance of a building permit for the second building (811th residential unit), the Owner/Permittee shall provide a private shuttle service as part of the Transportation Demand Management Plan connecting the project to existing shopping opportunities at Mira Mesa Marketplace Center and transit connections on Mira Mesa Boulevard and Black Mountain Road subject to the satisfaction of the City Engineer. This shuttle shall have two stops on the project site and shall be limited to residents and guests of the development. The shuttle shall carry no fewer than 16 passengers and be shall conform to the requirements of the American with Disabilities Act (ADA accessible). The shuttle shall maintain 15 minute headways in weekday peak hours. Days, hours of operation, and routing are to be satisfactory to the City Engineer.

37. Prior to the issuance of a building permit for first residential dwelling unit, the Owner/Permittee shall assure, to the satisfaction of the City Engineer, construction of a traffic signal at the intersection of Westview Parkway and the project’s main access, relocation of the park driveway to be located at the signalized location, re-striping of Westview Parkway to accommodate the signal, and a signal interconnect between the existing signals on Westview Parkway at Galvin/Westview Parkway at Capricorn and the new signalized project access on Westview Parkway.

38. Prior to the issuance of a building permit for the third building (1621st dwelling unit) the Owner/Permittee shall provide, to the satisfaction of the City Engineer, an improvement for a connection to the existing public road and signal at Galvin Avenue and Westview Parkway to provide a second signalized access to the project.

WASTEWATER REQUIREMENTS:

39. All onsite sewer facilities will be private.

40. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of all public sewer facilities necessary to serve this development.

41. Prior to the issuance of any occupancy permit, the Owner/Permittee shall abandon the existing onsite public sewer main in the south portion of this lot or it will be converted to private, satisfactory to the Director of Public Utilities. All associated public sewer easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director.
42. Prior to the issuance of any engineering or building permits, the Owner/Permittee shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of private sewer facilities that serve more than one ownership.

43. The Owner/Permittee shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

44. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

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

**WATER REQUIREMENTS:**

46. Prior to the approval of any public improvement drawings, the Owner/Permittee shall provide acceptable potable and reclaimed water studies satisfactory to the Public Utilities Director. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies.

47. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) and the removal of all existing unused services within the proposed driveway easement access, in a manner satisfactory to the Public Utilities Director and the City Engineer.

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

49. Prior to the issuance of any building permits, the Owner/Permittee shall grant additional widened easement to include the proposed alignment of the driveway entrance, fire lane and portions of the northwest driveway which contain the existing water main and all associated water appurtenances including but not limited to the water and fire services, on-site fire hydrants, et cetera, in a manner satisfactory to the Public Utilities Director and the City Engineer.

50. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer.
51. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Public Utilities Director and the City Engineer.

52. Prior to issuance of any building or construction permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of recycled water services to provide connection to the recycled water system to be used for all irrigation and construction needs of the project as approved by the Public Utilities Director and the City Engineer. If recycled water is not yet available, then the irrigation systems shall be designed in such a manner as to accept recycled water when available and avoid any potential cross connections.

53. Prior to issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to provide connection to the recycled water system to be used for all irrigation needs of the project.

54. Prior to issuance of any building permits, the Owner/Permittee shall provide the Covenants, Conditions and Restrictions (CC&R’s) that will be used by the Casa Mira View Homeowners Association for the operation and maintenance of all the private water recycling lines and appurtenances that serve the site. The CC&R’s must also include LEED certified water conservation measures or equivalent and WaterSense or Energy Star appliances.

55. The Owner/Permittee shall design and construct all proposed buildings in compliance with the State of California 2007 California Green Building Standards Code, CCR, Title 24, Part 11 or comparable for water conservation measures which achieves a 20% improvement in water use efficiency for residential and commercial plumbing fixtures over the building code in effect as of the date of preparation of the Water Supply Assessment.

56. The Owner/Permittee agrees to design and construct all proposed buildings to include LEED certified or equivalent water conservation measures and Water Sense or Energy Star Appliances as approved by the Public Utilities Director and the City Engineer. These measures shall reduce the overall water demand by a minimum of 7.5%.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development 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 §66020.

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

APPROVED by the Council of the City of San Diego on [date and resolution number].
Permit Type/PTS Approval No.: PDPermit No. 294375
and SDP No. 294373
Date of Approval:

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

______________________________
Kelly Broughton
Director
Development Services

NOTE: Notary acknowledgment
must be attached per Civil Code
section 1180 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.

Scripps Mesa Owner/Permittees, LLC
Owner/Permittee

By __________________________
NAME
TITLE

Scripps Mesa Owner/Permittees, LLC
Owner/Permittee

By __________________________
NAME
TITLE

NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.
ORDINANCE NUMBER O-______________ (NEW SERIES)

ADOPTED ON ________________

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO CHANGING 56.30 ACRES LOCATED ON THE EAST SIDE OF WESTVIEW PARKWAY, NORTH OF MIRA MESA BOULEVARD, WITHIN THE MIRA MESA COMMUNITY PLAN AREA, IN THE CITY OF SAN DIEGO, CALIFORNIA, FROM THE RM-3-7 ZONE INTO THE RM-3-8 ZONE, AS DEFINED BY SAN DIEGO MUNICIPAL CODE SECTION 131.0400; AND REPEALING ORDINANCE NO. 0-18451 (NEW SERIES), ADOPTED DECEMBER 9, 1997, OF THE ORDINANCES OF THE CITY OF SAN DIEGO INSO FAR AS THE SAME CONFLICTS HEREW ITH.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That 56.30 acres located on the east side of Westview Parkway, north of Mira Mesa Boulevard, and legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder, in the Mira Mesa Community Plan area, in the City of San Diego, California, as shown on Zone Map Drawing No. B-4269, filed in the office of the City Clerk as Document No. OO- __________, are rezoned from the Residential Base zones into the Residential Base zones, as the RM-3-8 zone is described and defined by San Diego Municipal Code Chapter 13 Article 1 Division 4. This action amends the Official Zoning Map adopted by Resolution R-301263 on February 28, 2006.

Section 2. That Ordinance No. 0-18451 (New Series), adopted December 9, 1997, of the ordinances of the City of San Diego is repealed insofar as the same conflicts with the rezoned uses of the land.
Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage, and no building permits for development inconsistent with the provisions of this ordinance shall be issued unless application therefore was made prior to the date of adoption of this ordinance.

APPROVED: MICHAEL AGUIRRE, City Attorney

By ________________________________
   Shirley R. Edwards
   Chief Deputy City Attorney

Initials~
Date~
Or.Dept: INSERT~
Case No. 91647
O-INSERT~
Form=inloto.frm(61203wet)
PLANNING COMMISSION RESOLUTION NO. 4449-PC

RECOMMENDING TO THE CITY COUNCIL APPROVAL OF THE PROPOSED Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373
CASA MIRA VIEW, PTS# 91647

WHEREAS, on October 2, 2008, the Planning Commission of the City of San Diego held a public hearing for the purpose of considering and recommending to the Council of The City of San Diego approval and adoption of Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373; and

WHEREAS, Scripps Mesa Developers, LLC, Applicant requested Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373 for the purpose of subdividing and developing 41.31 acres with 1,848 dwelling units and other site amenities; and

WHEREAS, the Planning Commission of the City of San Diego has considered all maps, exhibits, and written documents contained in the file for this project on record in the City of San Diego, and has considered the oral presentations given at the public hearing; NOW THEREFORE,

BE IT RESOLVED, by the Planning Commission of the City of San Diego that it hereby recommends to the Council of The City of San Diego approval and adoption of the Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373.

BE IT FURTHER RESOLVED that the Planning Commission of the City of San Diego hereby recommends to the Council of the City of San Diego approval and adoption of the Rezone No. 481935, Easement Vacation No. 368513, Vesting Tentative Map No. 481936, Planned Development Permit No. 294375 and Site Development Permit No. 294373 and incorporate all other listed actions.

John S. Fisher
Development Project Manager
Development Services

Elisa Contreras
Secretary to the Planning Commission

Dated October 2, 2008
By a vote of: 4:0:0
Planning Commission Minutes for meeting of October 2, 2008, were unavailable at the time back-up material was processed.
September 2, 2008

Via Cal Express

Chairman Barry Schultz and
Members of the Planning Commission
City of San Diego
1222 First Avenue, 4th Floor
San Diego, California 92101

Re: Commission Docket of September 11, 2008
Casa Mira View

Dear Chairman Schultz and Members of the Planning Commission:

We represent Scripps Mesa Developers, LLC ("SMD"), whose proposed Casa Mira View project will be before you on September 11, 2008. We are seeking your support for this valuable project. I am writing primarily to emphasize that the project is covered by a development agreement guaranteeing the number of units.

Casa Mira View proposes 1,848 residential units on about 41 acres near Westview Parkway and Capricorn Way in Mira Mesa. The density is consistent with the community plan designation for the site. The project consists of three 5-story residential buildings, each of which will wrap around an above-ground parking structure. The project will include swimming pools and other amenities. A privately-funded shuttle will allow residents to reach local businesses and recreational facilities without burdening the local road or transit systems. SMD has committed to providing its road improvements up front, even though much of the development necessitating those improvements as mitigation will not be built for years. SMD will provide not fees, but one hundred eighty-five affordable housing units either on-site or nearby. The Mira Mesa Community Planning Group endorsed the project by a 12-0 vote.
SMD will provide more detailed information regarding the project and various planning issues separately. As noted above, I am writing separately to address a topic that mixes planning and legal considerations. In short, the right to develop the project has vested because it is the last subject of a development agreement that is still in effect.

VESTED RIGHTS

The development agreement in question was entered into between the City and Pardee Construction Company in late 1988. I have enclosed a copy for your reference. According to Section 4.2 (page 7), the development agreement is in effect for twenty years after the effective date of the ordinance that approved it (O-17178). According to Section 1.6 (page 4), the ordinance approving the agreement took effect on December 14, 1988, so the agreement will be in effect until late this year. Pardee assigned the development agreement for the Casa Mira View property to SMD in 2007.

The development agreement provided the City many benefits, mostly by requiring that Pardee (or its successors) provide a great deal of public infrastructure over and above what the City could legally have demanded. This included portions of Black Mountain Road and Westview Parkway, which have been built; most of Hage neighborhood park, which has been improved; what was then a third community park, which has been completed; a library and community swimming pool, which have also been built; and so on. There was also a contribution for the Penasquitos Canyon Preserve, which has been paid. In fact, the City has separately acknowledged that SMD has no further liability for the extraordinary benefits of the development agreement because they have all been provided.

Conversely, the development agreement provided Pardee (and now provides SMD) one major benefit: Section 5 (on page 11) vested a right to develop the "density and intensity of use" of "1,848 multi-family units in the subdivision commonly known as 'Casa Mira View.'" That is exactly the project now before you. The agreement is still in effect, so it assures the number of units being proposed. Even if the agreement had expired, SMD's rights would have vested because the City has received its benefits from the agreement and because SMD's application was deemed complete months ago. In any event, the agreement is still in effect.
CLARIFICATION OF CONDITIONS

We ask that the Commission correct two of the conditions staff has proposed for the project. Condition No. 5 of the vesting tentative subdivision map and condition No. 10 of the planned development/site development permit are defense and indemnity provisions requiring SMD to pay the City Attorney’s fees and giving the City (i.e., the City Attorney) control over any litigation challenging the project. This violates the Subdivision Map Act (GOVERNMENT CODE §66474.9), which requires that cities bear their own attorney’s fees and not impose a settlement on the developer. (Both conditions say, consistent with the Map Act, that the developer need not perform a settlement to which it did not agree, but that protection has no value given the preceding sentence giving the City sole authority to dispose of the matter, presumably including invalidation of the permits.) In the past, developers have been willing to accept the City’s version of this provision in a spirit of cooperation. Unfortunately, though, the position of the current City Attorney, that his office can dictate the City’s legal policy even in conflict with the Council, necessitates conforming these conditions to the law. We thus request that Condition No. 5 of the subdivision be replaced with the following:

Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, “Indemnified Parties”]) harmless from any claim, action, or proceeding against any Indemnified Party to attack, set aside, void, or annul City’s approval of this project, which action is brought within the time period provided for in Government Code §66499.37. City shall promptly notify the subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify the subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, the subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney’s fees and costs, and defends the action in good faith. The subdivider shall not be
required to pay or perform any settlement unless the settlement is approved by the subdivider.

This tracks the language of state law. To avoid conflicts between the two entitlements, Condition 10 of the use permit could then either be deleted or replaced with identical language.

CONCLUSION

Casa Mira View would provide many benefits to the City. It will provide needed housing in a location consistent with the community plan. The community planning group endorsed the project unanimously. Even though the property is protected by a development agreement, SMD will provide not fees, but one hundred eighty-five affordable housing units either on-site or nearby. A private shuttle will ensure that residents do not burden the local road or transit systems. The density of Casa Mira View has vested. We urge that you recommend approval of this valuable project.

Sincerely,

[Signature]

Paul E. Robinson
HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP

cc (w/enclosure):
Mayor Jerry Sanders
William Anderson
John Fisher
Stuart Posnock
Carol Matson
John Leppert
From:  jaibirdie@hotmail.com  
Sent:  Tuesday, October 14, 2008 11:00 PM  
To:  CLK Hearings1  
Subject:  project no: 91647

This is a concern with respect to the proposed development of 1848 condominium at 11195 westview parkway. This site is close to the school and playground where people gathers most of time and traffic and congestions will be a problem since westview parkway is just four lane street both ways. the only access for parents dropping their kids in the morning and residents who uses the ball park and the picnic park that residents uses mostly on weekend. With 1848 proposed condominium, lets say average number of residents per condo is 3, you are talking about 5544 people in that neighborhood and with average number of cars per resident is 2, you are talking about 3696 cars in that neighborhood alone with only access out is westview parkway .. could you imagine how congested the road is early in the morning where people are going to work and parents dropping their kids at school. and with the ballpark just across the street , west view parkway will be totally in shambles with people looking for parking to use the ball park.

is there any study as how many cars uses westview parkway in the morning and during that time that ball parks are being used by neighborhood residents?

thanks,

concern resident,

jay sumilang

10/15/2008
From: Lopez, Dante P. CIV FISCSD Code 4315 [dante.lopez@navy.mil]
Sent: Thursday, October 16, 2008 9:18 AM
To: CLK Hearings1
Subject: Rezone, Easement Vacation for Casa Mira View

My name is Dante P. Lopez. I am a retired U.S. Navy servicemen but still work for the Navy as a civilian employee. I live in 11267 Spitfire Road, San Diego, Ca. My property is one of the rows of houses that will parallel to this future development. I am one of the pioneer owners of this property since 1985 which among us at Spitfire Road still are. I will not be here during the hearing on Tuesday, October 28, 2008 because I will be overseas working for a Navy project.

Me and my neighbors saw the developers plan when they had their open house presentation at Hage Elementary School last spring and we have some concerns of what will be the implications since it will be adjacent to our properties.

According to the plan of the developers, structures will be built at about 80 ft. from their property line. Structures are five storey buildings. Their property is elevated about more than 15 feet from our property.

Building a five storey structure plus elevation will just dwarf the location of our properties, thereby overlooking us downhill all the time. Although the developers told us that they will plant trees to camouflage their buildings, these trees will take years before they grow to their attained heights which I will not envision anymore. Our concern here is our privacy and for us, looking those tall buildings will be an eye sore and that is given, God forbid. These just break our hearts after 23 years living peacefully. Additionally, with the height of the building and added elevation, this will deprive us of the sunlight we always have during the peak of winter because the sun rises from a easterly south direction. What we will have are shades of this building and lesser heat radiating into our houses.

In comparison to the units built by Home Depot by Hillery Road and those at La Jolla Village Drive and I-805, these condominiums to be built at Casa Mira View will be the highest in this corridor. The advantage of those two developments, there are no adjacent detached houses nearby. Casa Mira View will be build just right near our backyards.

Me and my neighbors know that we cannot stop the developers and it is hard to fight city hall. We are dwarves fighting a giant. What me and my neighbors recommend to the council if the developers erect these building more than 80 ft. from their property line thus minimizing the view of these tall buildings from us and giving us more the privacy we currently enjoy. We do not know if this will put a dent in the developers and city hall’s agenda, we just hope somebody could take a look on this putting their situation as if they are living in this area.

We love the area and we hope the city council will hear our dilemma and help us come up with a more viable solution. From the beginning that this was planned, we are just in the state of depressive move of what will happen to our properties we worked for all those years. Thank you for reading my concern in behalf of myself and my neighbors.

Very respectfully yours,

Dante P. Lopez
Disbursing Examiner
FEG, FISC, San Diego
937 N. Harbor Drive

10/16/2008
October 24, 2008

Via Cal Express

Council President Scott Peters
and Members of the City Council
City of San Diego
202 “C” Street, 10th Floor
San Diego, California 92101

Casa Mira View

Dear President Peters and Members of the City Council:

We represent Scripps Mesa Developers, LLC (“SMD”), whose proposed Casa Mira View project will be before you on October 28, 2008. We are seeking your support for this valuable project. I am writing primarily to emphasize that the project is covered by a development agreement guaranteeing the number of units.

Casa Mira View proposes 1,848 residential units on about 41 acres near Westview Parkway and Capricorn Way in Mira Mesa. The density is consistent with the community plan designation for the site. The project consists of three 5-story residential buildings, each of which will wrap around an above-ground parking structure. The project will include swimming pools and other amenities. A privately-funded shuttle will allow residents to reach local businesses and recreational facilities without burdening the local road or transit systems. SMD has committed to providing its road improvements up front, even though much of the development necessitating those improvements as mitigation will not be built for years. SMD will provide not fees, but one hundred eighty-five affordable housing units either on-site or nearby. The Mira Mesa Community Planning Group endorsed the project by a 12-0 vote. Finally, the Planning Commission approved the project by a 4-0 vote.

SMD will provide more detailed information regarding the project and various planning issues separately. As noted above, I am writing separately to address two topics that arise from legal considerations. In short, the right to develop the project has vested because it is the last subject of a development agreement that is still in effect, and the Council should use the alternative defense/indemnity language it has already used on other projects.
VESTED RIGHTS

The development agreement in question was entered into between the City and Pardee Construction Company in late 1988. I have enclosed a copy for your reference. According to Section 4.2 (page 7), the development agreement is in effect for twenty years after the effective date of the ordinance that approved it (O-17178). According to Section 1.6 (page 4), the ordinance approving the agreement took effect on December 14, 1988, so the agreement will be in effect until later this year. Pardee assigned the development agreement for the Casa Mira View property to SMD in 2007.

The development agreement provided the City many benefits, mostly by requiring that Pardee (or its successors) provide a great deal of public infrastructure over and above what the City could legally have demanded. This included portions of Black Mountain Road and Westview Parkway, which have been built; most of Hage neighborhood park, which has been improved; what was then a third community park, which has been completed; a library and community swimming pool, which have also been built; and so on. There was also a contribution for the Penasquitos Canyon Preserve, which has been paid. In fact, the City has separately acknowledged that SMD has no further liability for the extraordinary benefits of the development agreement because they have all been provided.

Conversely, the development agreement provided Pardee (and now provides SMD) one major benefit: Section 5 (on page 11) vested a right to develop the "density and intensity of use" of "1,848 multi-family units in the subdivision commonly known as 'Casa Mira View.'" That is exactly the project now before you. The agreement is still in effect, so it assures the number of units being proposed. Even if the agreement had expired, SMD's rights would have vested because the City has received its benefits from the agreement and because SMD's application was deemed complete months ago. In any event, the agreement is still in effect.

CLARIFICATION OF CONDITIONS

We ask that the Commission correct two of the conditions staff has proposed for the project. Condition No. 5 of the vesting tentative subdivision map and condition No. 10 of the planned development/site development permit are defense and indemnity provisions requiring SMD to pay the City Attorney's fees and giving the City (i.e., the City Attorney) control over any litigation challenging the project. This violates the Subdivision Map Act (GOVERNMENT CODE §66474.9), which requires that cities bear their own attorney's fees and not impose a settlement on the developer. (Both conditions say, consistent with the Map Act, that the developer need not perform a settlement to which it did not agree, but that protection has no value given the preceding sentence giving the City sole authority to dispose of the matter, presumably including invalidation of the permits.) In the past, developers have been willing to accept the City's version of this provision in a spirit of cooperation. Unfortunately, though, the position of the current City Attorney, that his office
can dictate the City's legal policy even in conflict with the Council, necessitates conforming these conditions to the law. We thus request that both conditions be replaced with the following:

Subdivider/Owner/Permittee shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding against any Indemnified Party to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided for in Government Code §66499.37. City shall promptly notify Subdivider/Owner/Permittee of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify Subdivider/Owner/Permittee of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, Subdivider/Owner/Permittee shall not thereafter be responsible to defend, indemnify, or hold City harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, and defends the action in good faith. Subdivider/Owner/Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the Subdivider/Owner/Permittee.

This tracks the language of state law and avoids a conflict between the two entitlements.

At a recent Council hearing on another project, the City Attorney advised the Council that the City's standard defense/indemnity language was not barred by the Map Act. We advised the Council otherwise, but did not have a copy of the Map Act handy. For the Council's reference, I have thus also attached a copy of the Map Act section (GOVERNMENT CODE §66474.9) in question. As the Council can see, it explicitly bars any other form of a defense/indemnity provision ("Except as provided in subdivision (b), a local agency may not require . . ."), including the language that the City Attorney had advised the Council to use.

CONCLUSION

Casa Mira View would provide many benefits to the City. It will provide needed housing in a location consistent with the community plan. Both the community planning group and the City's Planning Commission endorsed the project unanimously. Even though the property is protected by a
development agreement, SMD will provide not fees, but one hundred eighty-five affordable housing units either on-site or nearby. A private shuttle will ensure that residents do not burden the local road or transit systems. The density of Casa Mira View has vested. We urge that you recommend approval of this valuable project.

Sincerely,

Paul E. Robinson
HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP

PER/RAS:cas
Enclosures: Development Agreement
GOVERNMENT CODE §66474.9

cc (w/enclosures):
   Mayor Jerry Sanders
   William Anderson
   John Fisher
   Stuart Posnock
   Carol Matson
   John Leppert

353242_1
66474.9. (a) Except as provided in subdivision (b), a local agency may not require, as a condition for a tentative, parcel, or final map application or approval, that the subdivider or an agent of the subdivider, defend, indemnify, or hold harmless the local agency or its agents, officers, and employees from any claim, action, or proceeding against the local agency as a result of the action or inaction of the local agency, advisory agency, appeal board, or legislative body in reviewing, approving, or denying the map.

(b) (1) A local agency may require, as a condition for a tentative, parcel, or final map application or approval, that the subdivider defend, indemnify, and hold harmless the local agency or its agents, officers, and employees from any claim, action, or proceeding against the local agency or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the local agency, advisory agency, appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37.

(2) Any condition imposed pursuant to this subdivision shall include the requirement that the local agency promptly notify the subdivider of any claim, action, or proceeding and that the local agency cooperate fully in the defense. If the local agency fails to promptly notify the subdivider of any claim, action, or proceeding, or if the local agency fails to cooperate fully in the defense, the subdivider shall not thereafter be responsible to defend, indemnify, or hold harmless the local agency.

(c) Nothing contained in this section prohibits the local agency from participating in the defense of any claim, action, or proceeding, if both of the following occur:

(1) The agency bears its own attorney's fees and costs.

(2) The agency defends the action in good faith.

(d) The subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the subdivider.
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SAN DIEGO AND
PARDEE CONSTRUCTION COMPANY
NEGOTIATED AND ENTERED INTO PURSUANT TO
CITY COUNCIL POLICY 600-37 ADOPTED BY THE
CITY COUNCIL ON AUGUST 9, 1988 AND AS
AMENDED ON SEPTEMBER 13, 1988

DOCUMENT NO. 00-17178
FILED
NOV 14 1988
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Submitted by:
Pardee Construction Company
110 West "C" Street
San Diego, California 92101

Applicant's Attorneys:
John D. Butler, Esq.
John E. Ponder, Esq.
Sparber, Ferguson, Naumann, Ponder, & Ryan
701 "B" Street, Suite 800
San Diego, California 92101
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</table>

PCC/DASD/TC: REGW7
DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF SAN DIEGO AND
PARDEE CONSTRUCTION COMPANY
NEGOTIATED AND ENTERED INTO PURSUANT TO
CITY COUNCIL POLICY 600-37 ADOPTED BY THE
CITY COUNCIL ON AUGUST 9, 1988 AND AS
AMENDED ON SEPTEMBER 13, 1988

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into
between THE CITY OF SAN DIEGO, a municipal corporation ("City"),
and PARDEE CONSTRUCTION COMPANY, a California corporation
("Owner" or "Property Owner").

1. RECITALS. The Agreement is entered into with reference
to the following facts:

1.1 Code Authorization. City, a charter city, is
authorized pursuant to Government Code Sections 65864 through
65869.5 to enter into development agreements with persons having
legal or equitable interests in real property for the purpose of
establishing certainty for both City and Owner in the development
process. City enters into the Agreement pursuant to the pro-
visions of the Government Code, the City charter and its home-
rule powers, City Municipal Code sections 105.0101 et seq.,
Council Policy 600-37, and applicable City policies. The parties
acknowledge:

(1) This Agreement is intended to assure adequate
public facilities at the time of development.

(2) This Agreement is intended to assure develop-
ment in accordance with City's Capital Improvement Plans.
(3) This Agreement is intended to provide certainty in the development approval process by only vesting the permitted use(s), density and intensity of use with respect to the subject property.

(4) This Agreement will permit achievement of growth management goals and objectives as reflected in the Progress Guide and Council Policy No. 60K-37.

(5) Owner is required by the Mira Mesa Community Plan, the Mira Mesa Public Facilities Financing Plan and Facilities Benefit Assessment, Planned Residential Permit No. 86-0969, Vesting Tentative Map No. 86-0969, and Final Map No. 9257 to provide public facilities or public improvements as conditions of approvals through the regulatory process.

(6) This Agreement will allow City to realize extraordinary and significant transit, transportation, educational, recreational, cultural and regional benefits and facilities and other supplemental benefits in addition to those available through the existing regulatory process.

(7) Many of the extraordinary and significant benefits identified as consideration to City for entering into this Agreement are of regional significance; relate to existing deficiencies in public facilities; require Property Owner to contribute a greater percentage of benefits than would otherwise be required; and represent benefits which would not otherwise be required as part of the development process.
1.2 **Owner.** Owner has a legal or equitable interest in the real property located in City and County of San Diego, California, described on Exhibit "A" attached hereto ("Property"). The Property includes the subdivisions known as Westview (216.6± acres) and Casa Mira View (43.4± acres) within the Mira Mesa community planning area. The Property is located on the north side of Mira Mesa Boulevard between Interstate 15 and Black Mountain Road.

1.3 **Interest of Owner.** Owner hereby represents that it has a legal or equitable interest in the Property and is authorized to enter into this Agreement.

1.4 **Planning Commission - Council Hearings.** On September 19, 1988, the Planning Commission of the City ("Planning Commission"), after giving notice pursuant to Government Code sections 65090 and 65091, held a public hearing to consider the Owner's application for this Agreement. The Planning Commission recommended that the City Council deny approval of the Development Agreement. On September 21, 1988, the Council of The City of San Diego ("Council"), after providing notice as required by law, held a public hearing to consider the Owner's application for the Agreement.

1.5 **Council Findings.** The Council finds that this Agreement is consistent with the Progress Guide and General Plan, Specific Plan or the Community Plan, Council Policy 600-37, as well as all other applicable ordinances, plans, policies and regulations of City.
1.6 City Ordinance. On **November 14, 1988**, the Council adopted Ordinance No. 0-17178 approving this Agreement. The ordinance becomes effective on **December 14, 1988**.

2. DEFINITIONS. In the Agreement, unless the context otherwise requires:


2.2 "EIR" is the Environmental Impact Report EQD Nos. 86-0969/87-0177, certified on January 5, 1988, by City Council Resolution No. R-270080.

2.3 "FM" is Final Map No. 9257, approved by City Council on June 18, 1979, pursuant to Resolution No. R-223727, and any duly approved amendment to the FM.

2.4 "Financing Plan" means the Mira Mesa Public Facilities Financing Plan, adopted by the City Council on February 23, 1988, by Resolution No. R-275414, or subsequent approved amendments. The parties recognize that the Financing Plan sets forth the public facilities which will be required for the ultimate build-out of the Community Plan. The general description, process and allocation of costs contained in the Financing Plan are further explained and identified in the Financing Plan which is incorporated herein by reference.

2.5 "Negative Declaration" is the Negative Declaration for Hage Park, EQD No. 87-0456 issued July 23, 1987, and Addendum thereto.
2.6 "PRD" is Planned Residential Permit No. 86-0969, approved by Planning Commission on October 22, 1987, pursuant to Resolution No. 0086-PC, and any duly approved amendment to the PRD.

2.7 "Project" is the development of the Property as set forth in the Community Plan, PRD, VTM, and FM. The Project includes 38 single family detached units and 1,826 attached multi-family units in the subdivision commonly known as "Westview" and 1,848 multi-family units in the subdivision commonly known as "Casa Mira View."

2.8 "Property" is the real property referred to in Exhibit A.

2.9 "Property Owner" or "Owner" means the person, persons, or entity having a legal or equitable interest in the Property and includes the Property Owner's successors in interest.

2.10 "Shapell" is Shapell Industries, Inc., and its successor in interest, S & S Construction Company, who have a legal or equitable interest in that subdivision commonly known as Mesa Del Sol which is subject to Planned Residential Permit No. 86-0613, Tentative Map No. 86-0613 and Final Map No. 9407.

2.11 "VTM" is Vesting Tentative Map No. 86-0969, approved by Planning Commission on October 22, 1987, pursuant to Resolution No. R-0078-PC, and any duly approved amendment to the VTM.

2.12 "Zoning" is Ordinance No. C-17009 adopted by City Council on January 19, 1988, rezoning the real property to R1-5000 and R-3000 zones.
2.13 "404 Permit" is Army Corps of Engineers 404 Permit issued December of 1987.

2.14 "1603 Permit" is California Department of Fish and Game Section 1603 permit dated December 22, 1987.

3. EXHIBITS. The following documents referred to in the Agreement are attached to this Agreement, are on file with the City of San Diego, and are identified as follows:

<table>
<thead>
<tr>
<th>Exhibit Designation</th>
<th>Description</th>
<th>Referred to in Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>The Property</td>
<td>1.2, 2.9</td>
</tr>
<tr>
<td>B</td>
<td>Planned Residential Permit No. 86-0969</td>
<td>1.1(5), 2.7</td>
</tr>
<tr>
<td>C</td>
<td>(deleted)</td>
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</tr>
<tr>
<td>D</td>
<td>Vesting Tentative Map No. 86-0969</td>
<td>1.1(5), 2.12</td>
</tr>
<tr>
<td>E</td>
<td>Army Corps of Engineers 404 permit</td>
<td>2.14</td>
</tr>
<tr>
<td>F</td>
<td>California Department of Fish and Game Section 1603 permit</td>
<td>2.15</td>
</tr>
<tr>
<td>G</td>
<td>Certificate EIR 86-0969</td>
<td>2.2</td>
</tr>
<tr>
<td>H</td>
<td>Notice of Determination for Westview PRD</td>
<td>3</td>
</tr>
<tr>
<td>I</td>
<td>Negative Declaration for Hage Park</td>
<td>2.6</td>
</tr>
<tr>
<td>J</td>
<td>Notice of Determination for Hage Park</td>
<td>3</td>
</tr>
<tr>
<td>K</td>
<td>Final Map No. 9257</td>
<td>1.1(5)</td>
</tr>
<tr>
<td>L</td>
<td>Black Mountain/Westview Parkway Improvement Plans</td>
<td>6.1(a)(1)</td>
</tr>
<tr>
<td>M</td>
<td>Hage Neighborhood Park General Development Plans</td>
<td>6.1(a)(2)</td>
</tr>
<tr>
<td>N</td>
<td>Third Community Park General Development Plans</td>
<td>6.1(a)(3)</td>
</tr>
</tbody>
</table>

4. GENERAL PROVISIONS.

4.1 Property Subject to the Agreement. Until released pursuant to the provisions of Section 9.3 below, no property
shall be released from this Agreement until Property Owner has fully performed its obligations arising out of the Agreement.

4.2 Duration of Agreement. The term of the Agreement shall commence on, and the effective date of the Agreement shall be, the effective date of City Ordinance No. 0-17178 as set forth in Section 1.6 above and the term shall extend for a period twenty (20) years following the effective date unless the Agreement is earlier terminated, or its term modified.

4.3 Assignment. Property Owner shall have the right to transfer or assign the Property, in whole or in part, to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, the rights of the Property Owner under this Agreement may not be transferred or assigned unless the written consent of the City Manager of City is first obtained and any transfer or assignment of the rights under this Agreement shall include in writing the assumption of the duties, obligations, and liabilities arising from this Agreement if the City Manager grants written consent to transfer the rights. Such transfer or assignment shall not relieve the Property Owner of any duty, obligation or liability to City without the consent of the City Manager. The City Manager's consent to transfer, assignment and release of liability shall not unreasonably be withheld.

During the term of this Agreement, any approved assignee or transferee of the rights under this Agreement shall observe and perform all of the duties and obligations of Property Owner contained in this Agreement as such duties and obligations pertain to the portion of the Property transferred or assigned.
Any and all approved successors and assignees of Property Owner shall have all of the same rights, benefits, duties, obligations, and liabilities of Property Owner under this Agreement. If the Property is subdivided, any subdivided parcel may be sold, mortgaged, hypothecated, assigned or transferred to persons for development by them in accordance with the provisions of this Agreement. Upon assignment or transfer of the rights of Property Owner under this Agreement, the obligations of Property Owner and the transferee or assignee shall be joint and several.

4.4 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or cancelled by the mutual consent of the parties but only in the same manner as its adoption by an ordinance as set forth in Government Code section 65868 and San Diego Municipal Code section 105.0109. The term "Agreement" or "Development Agreement" shall include any amendment properly approved and executed.

4.5 Enforcement. Notwithstanding Government Code section 65865.4 and San Diego Municipal Code section 105.0110, this Agreement is enforceable by any party to the Agreement in any manner provided by law. The remedies provided in Section 8.4 of this Agreement shall not include action in damages or any costs or attorney's fees resulting from any dispute, controversy, action or inaction, or any legal proceeding arising out of this Agreement.

4.6 Hold Harmless. Property Owner agrees to and shall hold City, its officers, agents, employees, consultants, special counsel and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable
relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the direct or indirect operations of the Property Owner or their contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to the Project; and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. Property Owner agrees to pay all costs for the defense of the City and its officers, agents, employees, consultants, special counsel and representatives regarding any action for damages, just compensation, restitution, judicial or equitable relief caused or alleged to have been caused by reason of Property Owner's actions in connection with the Project or any claims arising out of this Agreement. This hold harmless Agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered or alleged to have been suffered by reason of the events referred to in this paragraph or due by reason of the terms of, or effects, arising from this Agreement regardless of whether or not the City prepared, supplied or approved this Agreement, plans or specifications, or both, for the Project. The Property Owner further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel regarding any action by a third party challenging the validity of this Agreement or asserting that damages, just compensation, restitution, judicial or equitable relief is due to personal or property rights by reason of the terms of, or effects arising from this Agreement. Property Owner shall select legal
counsel to represent City in any such proceeding subject to City Attorney's approval. Such approval shall not be unreasonably withheld. City may make all reasonable decisions with respect to its representation in any legal proceeding.

4.7 Binding Effect of Agreement. To the extent not otherwise provided in Section 4.3 of this Agreement, the burdens of the Agreement bind and the benefits of the Agreement inure to the parties' successors in interest.

4.8 Relationship of the Parties. The contractual relationship between City and Owner arising out of the Agreement is one of independent contractor and not agency. This Agreement does not create any third party beneficiary rights.

4.9 Notices. All notices, demands and correspondence required or permitted by the Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:

The City of San Diego
City Administration Building
202 "C" Street, 9th Floor
San Diego, CA 92101
Attention: City Manager

If to Owner, to:

Pardee Construction Company
110 West "C" Street
San Diego, California 92101
Attention: Michael D. Madigan
Phone: (619) 231-9744

A party may change its address by giving notice in writing to the other party. Thereafter, notices, demands and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or,
if mailed, two (2) business days following deposit in the United States mail.

5. DEVELOPMENT OF THE PROPERTY.

5.1 Rules, Regulations and Policies. The rules, regulations and official policies governing the permitted use(s) of the Property, with respect to and only with respect to the density and intensity of use of the Property, shall be those rules, regulations and policies applicable to the Property as of the effective date of this Agreement.

5.2 Permitted Use, Density and Intensity of Use; Rate and Amount of Growth. This development agreement shall vest with respect to the subject Property only the permitted use(s) of land, density and intensity of use. The permitted use(s) of land, density and intensity of use shall be for the project which includes 38 single family detached units and 1,826 attached multi-family units in the subdivision commonly known as "Westview" and 1,848 multi-family units in the subdivision commonly known as "Casa Mira View."

The right to regulate the rate and amount of growth is not abrogated by the City. The City hereby retains the police power to provide for change in regulations, ordinances, policies and plans relating to moratoria, building permit allocations, timing and sequencing of development and the financing and provision of adequate public facilities at the time of development. No vested rights as to any requirements in this subparagraph either as to existing or future regulations, ordinances, policies and plans is hereby conferred.
5.3 Design and Construction Standards and Specifications. The design and construction standards and specifications for buildings and structures in the Project shall be subject to applicable design standards and guidelines in effect at the time that any development approval shall be sought for the Project or any unit or structure contained within the Project.

5.4 Maximum Height and Size of Structures. The maximum height and size for all structures shall be as provided in the applicable zoning classifications.

5.5 Reservations and Dedications of Lands for Public Purposes. Minimum reservations and dedications of land for public purposes shall be as set forth in all approvals for this Project, including the VTM, FM, PRD and as set forth in this Agreement.

5.6 Future Discretionary Approvals. Except as provided in section 5.2 and 5.9, this Agreement shall not prevent the City, when considering requests for discretionary approvals subsequent to the effective date of this Agreement, from applying new rules, regulations, and policies which are applicable to the Property, including but not limited to, changes in the general plans, specific plan, community plan, subdivision and/or building regulations, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent applications for land use entitlements based on such existing or new rules, regulations and/or policies; provided, however, that such new rules, regulations, and official policies are of general application to all development within the City of San Diego and are not imposed solely with respect to the subject property. In
addition, this Agreement shall not prevent the City from exercising its police power to protect the health, safety and welfare of the public. This Police Power, exercised in accordance with section 5.14 of this Agreement, is paramount to any rights or obligations created or existing between the parties.

5.6.1 Future Discretionary Approvals Required for Black Mountain Road Construction. Should Property Owner be required to obtain any discretionary approvals or amendments to existing approvals for the construction of Black Mountain Road on Owner's Property subsequent to the effective date of this Agreement as a result of being directed by City to construct that portion of Black Mountain Road which is shown on the Mesa Del Sol Final Map No. 9407, and Property Owner is unable to obtain such approvals because of the application of rules, regulations or policies which became effective after the effective date of this Agreement, then and in that event, Property Owner shall be relieved of its obligation to construct that portion of Black Mountain Road which is on the Mesa Del Sol Subdivision.

5.7 Processing Fees. All fees and charges intended to cover City costs associated with processing development of the Property, including but not limited to fees and charges for applications, processing, inspections, plan review, plan processing, and/or environmental review, which are existing or may be revised or adopted during the term of this Agreement, shall apply to the development of the Property.

5.8 Amendments or Additions to Facility Financing Programs. This Agreement shall not preclude the inclusion of and
changes to Facility Benefit Assessments, Facility Financing Plans, Development Impact Fees or other related fees adopted on a community or City-wide basis where such inclusion or change is caused by inflation, later more accurate cost estimation, later commonly accepted higher standards of construction, an allocation to the Mira Mesa Community of a fair share of the cost of any regional public improvements which demonstrably benefit said community and one or other communities of City or to address community facility deficiencies arising from and attributing to unforeseen circumstances in the development of the Property.

5.9 Development, Construction and Completion of Project. In consideration for the extraordinary and significant benefits set forth in Section 6.1, the Owner has been legally vested under paragraph 5.2 with regard to the permitted use(s) of land, density and intensity of use. To the extent that such benefits have been provided, the City also confers under this section the right to develop, construct and complete the Project in accordance with limited phasing and timing. The Owner shall be issued the following number of building permits in the following years provided.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Building Permits</th>
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<tbody>
<tr>
<td>1990</td>
<td>200</td>
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<tr>
<td>1991</td>
<td>350</td>
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<td>1992</td>
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<td>1994</td>
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<td>1995</td>
<td>450</td>
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<td>-----------------</td>
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<tr>
<td>1996</td>
<td>450</td>
</tr>
<tr>
<td>1997</td>
<td>450</td>
</tr>
<tr>
<td>1998</td>
<td>450</td>
</tr>
<tr>
<td>1999</td>
<td>212</td>
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In the event Owner elects to obtain fewer building permits during any calendar year than is specified, the difference in number shall be added to the number specified for the following year and may be carried forward from year to year thereafter. All building permits are subject to the allocation process pursuant to Section 4A3b of the growth management element amendment adopted by the City Council on August 9, 1988, subject to voter approval.

5.9.1 Certificate of Occupancy. No certificate of occupancy (or equivalent document) for any dwelling unit on the Property shall be issued other than for model units by City until construction of Black Mountain/Westview Parkway, Hage Neighborhood Park, the 25 acre athletic complex in the Third Community Park, and the traffic signal at Hillery Drive and Black Mountain Road have been completed. "Completed" means, for the purposes of this subsection, a status of construction such that members of the public can physically use the improvements shown on the Black Mountain/Westview Parkway, Hage Neighborhood Park and Third Community Park Improvement Plans. Nothing contained in this subsection shall be construed to limit City's right to require, after said improvements are so completed, correction of construction defects prior to City's acceptance of said improvements.
5.10 Moratoriums. Moratoriums enacted by the City for the public health, safety and welfare which are imposed on the Property or Project shall toll the time periods set forth in this Agreement.

5.11 Progress Reports Until Construction of Project is Complete. Owner shall make reports of the progress of construction of public facilities described in the Agreement in such detail and at such time as the City Manager or City Engineer reasonably requests.

5.12 City to Receive Construction Contract Documents. Owner shall furnish City, upon written request, copies of any public facilities construction contracts and supporting documents relating to the Property.

5.13 Conditions of Discretionary Approvals. The requirements imposed as conditions of any discretionary approval received through the City's existing regulatory process shall be governed by the terms of those approvals except to the extent this Agreement modifies such conditions, but in no event shall such conditions be affected by the termination, cancellation, rescission, revocation, default or expiration of this Agreement.

5.14 Police Power. In the exercise of its Police Power, the City Council shall recognize and consider the circumstances existing at the time this Agreement was authorized. In addition, such exercise of the Police Power shall be consistent with the purpose and intent of the Development Agreement statute, Government Code § 65864 et seq.
6. DEVELOPMENT PROGRAM.

6.1 (a) Extraordinary and Significant Benefits. Notwithstanding any provision in this Agreement, or of law, to the contrary and as partial consideration for the parties entering into this Agreement, the parties agree that Owner is obligated to provide to the City the following enumerated extraordinary and significant benefits even if the Owner cancels, rescinds, repudiates, refuses, revokes or in any manner terminates or attempts to terminate this Agreement:

(1) Black Mountain Road, Westview Parkway: Portions of Black Mountain Road and Westview Parkway which are, together with utilities and other appurtenances thereto, to be constructed on and adjacent to the property; said construction is herein referred to as "the Black Mountain/Westview Parkway Construction." The Black Mountain/Westview Parkway Construction shall be accomplished in compliance with (i) condition of said vesting tentative map set forth in Exhibit D and (ii) improvement plans approved by the City Engineer of City (23584-D for Black Mountain Road, 23643-D for Westview Parkway, and 23729-D for Westview Parkway Offsite), herein referred collectively to as "the Black Mountain/Westview Parkway Improvement Plans." A copy of the Black Mountain/Westview Parkway Improvement Plans is attached as Exhibit L.

(2) Hage Neighborhood Park: Property Owner shall also design and improve five (5) acres for a 9 acre neighborhood park, known as the Hage neighborhood park, also known as "Westview Park," adjacent to Hage Elementary School Site, in a manner satisfactory to the City Engineer. The site will consist
of an approximate 9 acre park site and a 10 acre school site; said construction is herein referred to as "Hage Neighborhood Park Construction."

Property Owner shall improve this 5 acre park site in accordance with section 5.9.1 prior to the occupancy of any of the residential units. Property Owner shall enter into an agreement with the City authorizing reimbursement for such work from the appropriate funds prior to the approval of the final map.

The Hage Neighborhood Park Construction shall be accomplished in compliance with (i) conditions of said vesting tentative map set forth in Exhibit D; and (ii) approved General Development Plan for the Hage Neighborhood Park ("the Hage Neighborhood Park General Development Plans"), a copy of which is attached as Exhibit M.

(3) Third Community Park: Unit No. 8 is designated as a public park and is to be acquired in accordance with procedures established in Section 64479 et seq. of the Subdivision Map Act. Prior to the approval of a final map including this park site, the City may, at its option, enter into an agreement to acquire the site within two (2) years. Failure to enter into such agreement will terminate the park reservation.

The designation of Unit No. 8 as a park site shall be deleted provided a Community Plan Amendment is approved by the City Council redesignating the land use and a lease is executed with the San Diego Community College District and the City of San Diego for a 30 acre site. Twenty-five acre athletic complex of the 30 acre site is to be improved prior to occupancy.
of any of the residential units; said construction is herein referred to as "Third Community Park Construction." Property Owner shall request FBA credits for this improvement.

The Third Community Park Construction shall be accomplished in compliance with (i) condition of said vesting tentative map set forth in Exhibit D; and (ii) approved General Development Plan for the Third Community Park ("the Third Community Park General Development Plans"), a copy of which is attached as Exhibit N.

(4) **Mira Mesa Library:** Property Owner is required by the Financing Plan to participate in the cost of construction of the Mira Mesa Library ("Library"). Subject to section 6.4, on January 10, 1992, Property Owner shall advance to the City, FBA Funds ("funds advanced"), subject to reimbursement pursuant to section 6.3, in an amount not to exceed Three Million Dollars ($3,000,000.00) for the Library. Said advancement of funds is prior to the time funds are required pursuant to the Financing Plan.

(5) **Penasquitos Canyon Preserve Non-Reimbursable Contribution:** Property Owner agrees to make a non-reimbursable contribution of One Hundred Thousand Dollars ($100,000.00) to the City for use in the Penasquitos Canyon Preserve. The contribution shall be made on or before the issuance of the first building permit for a residential unit constructed in the Project.

(6) **Community Swimming Pool:** Property Owner is required by the Financing Plan to participate in the cost construction of the community swimming pool ("Pool") in the
Community Park. Subject to section 6.4, on July 1, 1990, Property Owner shall advance to the City, FBA Funds ("funds advanced"), subject to reimbursement pursuant to section 6.3, in an amount not to exceed Two Million Four Hundred Thousand Dollars ($2,400,000.00) towards the cost of the construction of the Pool. Said advancement of funds is prior to the time funds are required pursuant to the Financing Plan.

(7) Field House: Property Owner is required by the Financing Plan to participate in the cost of the construction of the field house ("Field House") as part of phase two of the Third Community Park. Subject to section 6.4, on July 1, 1994, Property Owner shall advance to the City, FBA Funds ("funds advanced"), subject to reimbursement pursuant to section 6.3, in an amount not to exceed Two Million Dollars ($2,000,000.00) towards the cost of construction of the Field House. Said advancement of funds is prior to the time funds are required pursuant to the Financing Plan.

(8) Library and Park Non-Reimbursable Contributions: Property Owner agrees to make a non-reimbursable contribution of Five Hundred Thousand Dollars ($500,000.00) to City to be used for general improvements for the Mira Mesa Library. The contribution to the City shall be paid on demand by the City but no earlier than July 1, 1993. Property Owner agrees to make an additional non-reimbursable contribution of One Million Dollars ($1,000,000.00) to City to be used for general public improvements within the Mira Mesa Planning Area. The contribution for general public improvements shall be paid to the City as follows: Five Hundred Thousand Dollars ($500,000.00) on
demand by the City but no earlier than July 1, 1995; and the
balance of Five Hundred Thousand Dollars ($500,000.00), together
with accrued interest, if any, on demand by the City but no
earlier than July 1, 1997.

The dollar amounts set forth in section
6.1(a)(b) as non-reimbursable contributions are stated in 1989
dollars. Said amounts shall increase at the rate of 4% for the
remainder of fiscal year 1989 and at a rate thereafter consistent
with the inflation factor of the Financing Plan for each fiscal
year until paid.

6.1 (b) Additional Extraordinary and Significant
Benefits; Mesa Del Sol Improvements. City Council approval of
the Mesa Del Sol Subdivision in part obligated Shapell to
construct the following improvements ("Mesa Del Sol Impro-
vements"):  

(1) Black Mountain Road full-width north of Galvin
Avenue to the northerly subdivision boundary.

(2) Traffic signal system at Hillery Drive and Black
Mountain Road.

(3) To improve four acres of a nine acre
neighborhood park known as the Hage Neighborhood Park,
satisfactory to the City Engineer.

(i) As additional extraordinary and
significant benefits, Property Owner agrees, if directed by City,
to construct the Mesa Del Sol Improvements set forth in section
6.1(b) if Shapell is declared in default by the City under Final
Map No. 9407 of its agreement relating to the improvements for

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Mesa Del Sol. If Shapell or the successor in interest to the Mesa Del Sol subdivision is successful in obtaining a new PRD, tentative map or similar plan for the Mesa Del Sol Project, and/or Shapell or its successor in interest is exonerated from the default, then Property Owner will be relieved of the condition to provide the Mesa Del Sol Improvements described in section 6.1(b). In the event Property Owner is relieved of the condition to construct the Mesa Del Sol Improvements, any reference herein to the Mesa Del Sol Improvements shall be of no force or effect.

6.2 (a) THE BLACK MOUNTAIN/WESTVIEW PARKWAY CONSTRUCTION:

(1) Plans: Property Owner has, at Property Owner's sole cost, submitted to City the Black Mountain/Westview Parkway Improvement Plans for the Black Mountain/Westview Parkway Construction. City shall, in its customary and usual manner, review and critique the Black Mountain/Westview Parkway Improvement Plans and notify Property Owner of any required changes thereto. Property Owner shall promptly make such changes to the Black Mountain/Westview Parkway Improvement Plans.

(2) Bond(s): No later than thirty (30) days after City notifies Property Owner that the Black Mountain/Westview Parkway Improvement Plans are satisfactory to City,

1Improvements to Black Mountain Road shall be constructed to specifications approved by the City Engineer and upon City provided right-of-way.
Property Owner shall deliver to City a faithful performance and labor and materials bond(s) or other acceptable security, in penal amounts determined by City, which bond(s) shall secure the obligations of Property Owner pursuant to the development permit(s) described below.

(3) Improvement Permit(s): Upon receipt of the bond(s) described in Subsection 6.2(a)(2), City shall issue to Property Owner permit(s) authorizing and obligating Property Owner to perform, or cause to perform, the work set forth in the Black Mountain/Westview Parkway Improvement Plans ("the Improvement Permit(s)"). Property Owner shall diligently prosecute to completion the Black Mountain/Westview Parkway Construction.

(4) Vacation, Dedication: The Council shall take all necessary action to vacate portions of existing right-of-way, as required by Subdivision Board requirements, and dedicate as a public road those portions of Black Mountain Road, Samoa Avenue and Galvin Avenue which traverse City-owned land. Further, City shall timely accept, from the County of San Diego, dedication as a public road of those portions of Black Mountain Road which traverse County-owned lands.

(5) Dedication: Prior to or concurrently with Property Owner's delivery to City of the bond(s) described in Subsection 6.2(a)(2), Property Owner shall deliver to City, and City shall accept, a proper and lawful deed(s) in favor of City, executed and acknowledged by Property Owner, conveying to City (or dedicating as public streets, as City shall determine in its discretion) those portions of Westview Parkway and Black Mountain...
Road which are (i) shown on said vesting Tentative Map No. 86-0969; and (ii) not presently owned by City or the County of San Diego (or dedicated as public streets).

(b) THE HAGE NEIGHBORHOOD PARK AND THIRD COMMUNITY PARK CONSTRUCTION:

(1) Plans: Property Owner shall submit to City the Hage Neighborhood Park and Third Community Park Improvement Plans for 5 acres of the Hage Neighborhood Park and the 25 acre athletic complex in the Third Community Park Construction. City shall, in its customary and usual manner, review and critique the Hage Neighborhood Park and Third Community Park Improvement Plans and notify Property Owner of any required changes thereto. Property Owner shall promptly make such changes to the Hage Neighborhood Park and Third Community Park Improvement Plans.

(2) Bond(s): No later than thirty (30) days after City notifies Property Owner that the Hage Neighborhood Park and Third Community Park Improvement Plans are satisfactory to City Property Owner shall deliver to City a faithful performance and labor and materials bond(s) or other acceptable security, in penal amounts determined by City, which bond(s) shall secure the obligations of Property Owner pursuant to the development permit(s) described below.

(3) Improvement Permit(s): Upon receipt of the bond(s) described in Subsection 6.2(a)(2), City shall issue to Property Owner a permit(s) authorizing and obligating Property Owner to perform, or cause to perform, the work set forth in the Hage Neighborhood Park and Third Community Park Improvement Plans ("the Permit(s)"). Property Owner shall diligently prosecute to
completion the Hage Neighborhood Park and Third Community Park Construction.

6.3 Reimbursement for Parks, Library, Pool, and Mesa Del Sol Improvements: After Council's adoption of an ordinance approving this Agreement, City and Property Owner shall execute an agreement(s) setting forth the specific terms and conditions upon which Property Owner shall be reimbursed for the construction costs of Hage Neighborhood Park, the 25 acre athletic complex in the Third Community Park, the Mesa Del Sol Improvements and for the funds advanced towards the construction of the Library, Pool and Field House. Said agreement(s) shall contain all pertinent terms and conditions and be in compliance with (i) this Agreement; (ii) conditions of vesting tentative map No. 86-0969 set forth in Exhibit D; and (iii) the approved General Development Plans. Said agreement(s) shall further provide that:

(a) Property Owner shall provide for the complete design and construction for 5 acres of the Hage Park, a 25 acre athletic complex in the Third Community Park, and the Mesa Del Sol Improvements as described in Section 6.1(b) in accordance with the approved Improvement Plans;

(b) Property Owner shall be reimbursed by City the total actual cost of construction ("construction costs"), not to exceed the costs set forth in the Financing Plan, which shall include all documented costs incurred by Property Owner in designing, constructing and installing 5 acres of the Hage Park, the 25 acre athletic complex in the Third Community
(c) Property Owner shall be reimbursed by City for construction costs and funds advanced, together with interest as provided hereinafter, towards the construction of the FBA projects;

(i) City shall accrue and pay interest on construction costs incurred and funds advanced by Property Owner for Mira Mesa FBA projects (Hage Park, 25 acre athletic complex at Third Community Park, Library, Pool and Field House at Third Community Park). Interest shall accrue from the date construction costs are incurred and/or funds advanced until the end of the fiscal year of need for the particular FBA project as provided in the Financing Plan. The interest rate shall be the rate assumed for "cash on hand" cash flow projections in the Financing Plan.

(d) City shall reimburse Property Owner the costs of construction and/or funds advanced, together with accrued interest as allowed herein, by:

(i) Cash payment from the FBA for the Mira Mesa Community Plan area. Said cash payment shall be made at the time scheduled in the Mira Mesa Public Facilities Financing Plan. In the event there are funds available, payment may be made prior to the time scheduled so long as it is
not necessary to either increase the proposed FBA nor delay any other projects in the Financing Plan.

(ii) In the event City cannot fully reimburse Property Owner from the available funds described above, any remaining unreimbursed amounts shall be paid by granting to Property Owner credits against fees required by the Mira Mesa FBA. Said credit may be used by Property Owner, or its successors or assigns at the time, and from time to time, in payment of such FBA fee charges as Property Owner, or its successors or assigns, obtain building permits.

(iii) Notwithstanding the above, Property Owner may elect to receive full reimbursement in the form of FBA credit.

6.3.1 ADDITIONAL METHODS FOR REIMBURSEMENT OF MESA DEL SOL IMPROVEMENTS:

(1) In addition to the method described above for reimbursement of Mesa Del Sol Improvements, City agrees:

(a) Following the effective date of this Agreement, the City will accept a written request by Property Owner for the formation of a Reimbursement or Acquisition District for those public facilities described in Section 6.1(b) which are for the primary benefit of the Mesa Del Sol subdivision and which Property Owner constructs. City shall not unreasonably deny Property Owner's request for the formation of a Reimbursement or Acquisition District.
(b) If City declares Shapell to be in default of its agreement relating to the improvement of Mesa Del Sol, City shall proceed in good faith to cause the improvement security for said subdivision to be forfeited to the City. The proceeds of the forfeited improvement security and/or the proceeds of any judgment the City obtains against Shapell and/or its surety as a result of such default shall be applied towards the reimbursement of Property Owner for the construction costs it has incurred in constructing those improvements which are described in Section 6.1(b) ("Mesa Del Sol Improvements"). Any such reimbursement shall reduce the overall reimbursement owed for Mesa Del Sol Improvements accordingly.

It is specifically understood and agreed to by and between the parties hereto that: (a) City has full power, exclusive control and sole discretion over declaring Shapell and/or its successor in interest to be in default of its agreement relating to the improvements of Mesa Del Sol and its enforcing of the obligation of Shapell, its successor in interest, and its surety; (b) Property Owner is not responsible for, nor has it directed, suggested or participated in any way in the City's decision whether or not to declare Shapell and/or its successor in interest in default of its agreement relating to the improvements of Mesa Del Sol and its enforcing of the obligations of Shapell, its successor in interest and its surety.

(c) Property Owner shall be entitled to receive interest on the construction costs of the Mesa Del Sol Improvements from the time they are incurred until reimbursed at
the maximum rate provided by the applicable method(s) by which Property Owner is reimbursed.

(d) If by December 31, 1995, the City has not formed any of the cost reimbursement districts identified in section 6.3.1 (or their equivalent), then the City shall make a good faith effort to reimburse Property Owner for the Mesa Del Sol Improvements described in section 6.1(b).

6.4 Security for Performance of FBA Reimbursed Public Facilities. Property Owner shall post with City an irrevocable letter of credit issued by a financial institution approved by the City Manager and City Attorney in a form satisfactory to the City Manager and City Attorney guaranteeing payment of the FBA reimbursed public facilities and improvements. Said irrevocable letter of credit shall name City as beneficiary and shall authorize City to negotiate and obtain all or any portion of the funds represented by the irrevocable letter of credit from the financial institution issuing same in the event Property Owner fails to pay for FBA reimbursed facilities as set forth in Sections 6.1(a)(2), 6.1(a)(3), 6.1(a)(4), 6.1(a)(6) and 6.1(a)(7). Notwithstanding any provision in this Agreement or said irrevocable letter of credit to the contrary, City shall not be entitled to negotiate or obtain any funds represented by the irrevocable letter of credit prior to thirty (30) days of the awarding contract(s) for the design and/or construction of each facility described in Section 6.1(a)(2), 6.1(a)(3), 6.1(a)(4), 6.1(a)(6) and 6.1(a)(7). Property Owner may apply to City Manager and the City Manager may allow a reduction in the amount of the irrevocable letter of credit at such time as the public
facilities and improvements are completed and paid for. Said irrevocable letter of credit shall be deposited with City prior to the effective date of this Agreement.

6.5 Public Improvements, Facilities and Services. Owner agrees to provide the public improvements, facilities and services required by the VTM and FM. The terms and conditions for providing such public improvements, facilities and services are set forth in the VTM and FM. Fulfillment of the requirements specified in such documents shall be governed by the terms of those approvals and shall in no way be affected by the termination, cancellation or expiration of this Agreement.

7. ANNUAL REVIEW.

7.1 City and Owner Responsibilities. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Owner with the terms of this Agreement. Pursuant to Government Code section 65865.1, as amended, and City Municipal Code section 105.0108, Owner shall have the duty to demonstrate by substantial evidence its good faith compliance with the terms of the Agreement at the periodic review.

Either party may address any requirement of the Agreement during the review.

7.2 Review Letter. If Owner is found to be in compliance with the Agreement after annual review, City shall, upon written request by Owner, issue a Review Letter to Owner (the "Letter") stating that based upon information known or made known to the City Council, the City Planning Commission and/or the City Planning Director, the Agreement remains in effect and Owner is
not in default. Owner may record the Letter in the Official Records of the County of San Diego.

7.3 **Failure of Periodic Review.** City’s failure to review at least annually Owner’s compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a breach of the Agreement by Owner or City.

8. **DEFAULT.**

8.1 **Events of Default.** Property Owner is in default under this Agreement upon the happening of one or more of the following events or conditions:

(1) If a warranty, representation or statement made or furnished by Property Owner to the City is false or proves to have been false in any material respect when it was made;

(2) A finding and determination by the City made following a periodic review under the procedure provided for in Government Code section 65865.1 that upon the basis of substantial evidence the Property Owner has not complied in good faith with one or more of the terms or conditions of this Agreement;

(3) Any other event, condition, act or omission which materially interferes with the intent and objectives of this Agreement.

8.2 **Procedure Upon Default.**

(1) Upon the occurrence of default, the City shall give Property Owner (the "defaulting party") thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which
said default may be satisfactorily cured. After proper notice and expiration of said thirty (30) day cure period without cure, City may terminate or amend this Agreement in accordance with the procedure adopted by the City. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default.

(2) City does not waive any claim or defect in performance by Property Owner, if on periodic review the City does not propose to modify or terminate this Agreement.

(3) Non-performance shall not be excused because of a failure of a third person.

(4) An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the Property Owners, shall be sufficient to terminate this Agreement and a hearing on the matter shall not be required; however, Property Owner is required to provide the extraordinary and significant benefits specified in Section 6.1(a), regardless of any such termination.

(5) Adoption of a law or other governmental activity making performance by the applicant unprofitable or more difficult or more expensive does not excuse the performance of the obligation by the Property Owner.

(6) All other remedies at law or in equity which are not inconsistent with the provisions of this Agreement or are available to the parties to pursue in the event there is a breach.
8.3 **Damages Upon Termination.** In no event shall Property Owner be entitled to any damages against City upon termination of this Agreement.

8.4 **Institution of Legal Action.** In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or treach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement; or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of San Diego, State of California, or in the Federal District Court in the Southern District of California.

9. **ENCUMBRANCES AND RELEASES ON PROPERTY.**

9.1 **Discretion to Encumber.** This Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the Property or its improvement.

9.2 **Entitlement to Written Notice of Default.** The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property or any part thereof and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by Owner of the performance of Owner's obligations under the Agreement which has not been cured within thirty (30) days following the date of default.
9.3 **Releases.** City agrees that upon written request of Property Owner and payment of all fees and performance of the requirements and conditions required of Owner by this Agreement with respect to the Property, or any portion thereof, City may execute and deliver to Owner appropriate release(s) of further obligations imposed by this Agreement in form and substance acceptable to the San Diego County Recorder or as may otherwise be necessary to effect the release.

10. **MISCELLANEOUS PROVISIONS.**

10.1 **Rules of Construction.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

If there is more than one signer of this Agreement, their obligations are joint and several.

10.2 **Entire Agreement, Waivers and Amendments.** This Agreement constitutes the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiation or previous agreements between the parties respecting this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City or of Owner. All amendments to this Agreement must be in writing signed by the appropriate authorities of City and Owner, in a form suitable for recording in the Official Records of San Diego County, California. Within ten (10) days following the effective date of this Agreement, a copy of this Agreement shall be recorded in the Official Records of San Diego County, California. Upon the completion of performance of this Agreement or its revocation or
termination, a statement evidencing completion, revocation or termination signed by the appropriate agents of Owner and City shall be recorded in the Official Records of San Diego County, California.

10.3 Project as a Private Undertaking. It is specifically understood by the parties that: (a) the Project is a private development; (b) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property until City accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approvals; and (c) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.

10.4 Incorporation of Recitals. The Recitals set forth in Section 1 of this Agreement are part of this Agreement.

10.5 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Agreement.

10.6 Consent. Where the consent or approval of a party is required in or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.

10.7 Covenant of Cooperation. The parties shall cooperate with, deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
10.8 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of San Diego County, California, within ten (10) days following the effective date of this Agreement.

10.9 Extension of Time for Performance. In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of Acts of God or civil proceedings, riots, strikes, picketing, or damage to work in process by reason of fire, floods, earthquake, or other such casualties provided, however, that each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained. However, this section shall not apply to circumstances that could have been prevented by the exercise of prudence, diligence and due care. The term of this Agreement shall be extended by the period of time that Property Owner is actually delayed as a result of such cause.

IN WITNESS WHEREOF, this Agreement has been executed by the City of San Diego, acting by and through its City Manager, pursuant to Ordinance No. 0-17178, authorizing such execution, and by Property Owner.

Dated this 14th day of November, 1988.

THE CITY OF SAN DIEGO

By:

ASSISTANT

City Manager

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PROPERTY OWNER:
PARDEE CONSTRUCTION COMPANY, a California corporation
By:
MICHAEL D. MADIGAN
Title: Senior Vice President
By:
STEPHEN F. DOYLE
Title: Vice President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 14th day of November, 1988

JOHN W. WITT, City Attorney
By:
CURTIS H. FITZPATRICK
Assistant City Attorney

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

On this 13th day of January, 1989, before me, a Notary Public in and for said state, personally appeared

WITNESS my hand and official seal.

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STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

On this 7th day of December, 1988, before me, Debra L. Beaty, a Notary Public in and for said state, personally appeared Michael D. Madigan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Senior Vice President and Stephen F. Doyle, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Vice President of Pardee Construction Company, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Debra L. Beaty
Notary Public
LEGAL DESCRIPTION

PARCEL 1:

Parcel 1 of PARCEL MAP NO. 13508, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, October 1, 1984 as File No. 84-82561 of Official Records.

PARCEL 2:

The Northeast Quarter of Section 30, according to Record of Survey 6671, filed in the Office of the County Recorder of San Diego County, April 11, 1963 and the Northeast Quarter of the Southeast Quarter of Section 30 in Township 14 South, Range 2 West, San Bernardino Base and Meridian, in the City of San Diego, County of San Diego, State of California, according to Official Plat thereof of said land filed in the district land office on October 16, 1879.

EXCEPTING THEREFROM that portion of the Northeast Quarter of the Southeast Quarter of Section 30, Township 14 South, Range 2 West, San Bernardino Base and Meridian, described as follows:

Beginning at the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 30, said corner being distant along the East line of said Section 30, North 01°14'00" East, 1353.91 feet (Record 1,354.05 feet) from a 1 1/2 inch iron pipe and easterly the corner common to Sections 29, 30, 31 and 32; thence along the South line of said Northeast Quarter of the Southeast Quarter of Section 30, South 88°30'30" West, 30.03 feet; thence leaving said South line North 1°14'00" East, 71.57 feet; thence South 88°46'00" East, 30.00 feet to the East line of said Section 30; thence along said East line South 01°14'00" West, 70.25 feet to the Point of Beginning.

ALSO EXCEPTING THEREFROM all that portion being described as follows:

Beginning at the Northeast corner of Section 30, Township 14 South, Range 2 West, San Bernardino Base and Meridian, according to Record of Survey Map No. 6204, filed in the Office of the County Recorder of San Diego County, April 22, 1963 and designated thereon as R. P. 4, being also a numbered corner in said Section 30 as shown on Record of Survey Map No. 6671, filed in the Office of the County Recorder of San Diego County, April 11, 1966; thence along the Northerly line of said Section 30, according to said Record of Survey Map No. 6204, South 87°29'26" West a distance of 2710.88 feet to an intersection with the North-South center line of Section 31 as shown on said Record of Survey Map No. 6671; thence North 1°07'50" West-North 1°01'05" West according to Record of Survey 6671- along the North-South center line as shown on said Record of Survey 6671, a distance of 115.44 feet to the North Quarter corner of Section 30, as shown on said Record of Survey 6671; thence along the Northerly line of said Section 30, according to Record of Survey 6671, South 8°13'50" East-North 8°13'50" East according to Record of Survey 6671, a distance of 2710.88 feet to the Point of Beginning.

And also EXCEPTING THEREFROM any portion lying within North Point Unit No. 2, according to Map No. 8303, recorded May 8, 1976.

EXHIBIT Δ
All that real property situated in the City of San Diego, County of San Diego, State of California, bounded and described as follows:

Beginning at the Northeast corner of Section 30, Township 14 South, Range 2 West, San Bernardino Base and Meridian, according to Record of Survey Map No. 6204, filed in the Office of the County Recorder of San Diego County, April 22, 1963 and designated therein as Lot 4, being also a numbered corner in the boundary line of Rancho Penasquitos, being also the Northeast corner of said Section 30 as shown on Record of Survey Map No. 6671, filed in the Office of the County Recorder of San Diego County, April 11, 1944; thence along the Northerly line of said Section 30, according to said Record of Survey Map No. 6204, South 87°39'28" West a distance of 2110.88 feet to an intersection with the North-South center line of Section 30 as shown on said Record of Survey Map No. 6671; thence North 1°01'00" West -North 1°01'00" West according to Record of Survey 6671- along the North-South center line as shown on said Record of Survey 6671, a distance of 113.54 feet to the North Quarter corner of Section 30, as shown on said Record of Survey 6671; thence along the Northerly line of said Section 30, according to Record of Survey 6671, South 87°54'09" East - North 87°47'35" East according to Record of Survey 6671, a distance of 2710.88 feet to the Point of Beginning.

PARCEL 1:

Being a portion of the Northwest Quarter of the Southeast Quarter of Section 30, Township 14 South, Range 2 West, San Bernardino Base and Meridian, in the City of San Diego, County of San Diego, State of California, described as follows:

Beginning at the Northeast corner of said Northwest Quarter of the Southeast Quarter of Section 30; thence along the East line of said Northwest Quarter of the Southeast Quarter, South 01°28'04" West, 275.00 feet to a point on a curve concave Northeasterly and having a radius of 275.00 feet, a radial line to said point bears South 0°12'04" West; thence Northeasterly along the arc of said curve, through an angle of 87°14'31" a distance of 418.13 feet to an intersection with the North line of said Northwest Quarter of the Southeast Quarter; thence along said North line, North 87°42'36" East, 275.00 feet to the Point of Beginning.

Parcel 5:

Lots 1 through 6 inclusive of Casa Mira View according to Map thereof No. 9257 as filed in the Office of the County Recorder of San Diego County, June 25, 1979 as File No. 79-263324 of Official Records, in the City of San Diego, County of San Diego, State of California.

Parcel 6:

That portion of Sanse Avenue and Galvin Street Right of Ways adjacent to Lots 1 through 6 inclusive of Casa Mira View according to Map thereof 9257 that would revert to said Lots 1 through 6 inclusive, upon proper action to close and vacate said right of ways to public use.
Being all that portion of the Southeast Quarter of the Southwest Quarter of Section 30 and the Southwest Quarter of the Southeast Quarter of Section 29, all in Township 14 South, Range 2 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California, described as follows:

Beginning at the southeast corner of said Section 30; 
Thence South 88°15'58" West a distance of 103.72 feet; 
Thence North 31°35'22" East a distance of 37.05 feet to the beginning of a tangent 114.00 foot radius curve concave northwesterly; 
Thence northerly along the arc of said curve through a central angle of 31°39'32" a distance of 639.89 feet to a point on the arc of a non-tangent 970.00 foot radius curve concave westerly, a radial line to said point bears North 78°52'54" East; 
Thence southerly along the arc of said curve through a central angle of 06°56'30" a distance of 117.52 feet; 
Thence tangent to said curve South 04°10'36" East a distance of 339.34 feet to the beginning of a tangent 1970 foot radius curve concave westerly; 
Thence southerly along the arc of said curve through a central angle of 02°26'17" a distance of 83.63 feet; 
Thence tangent to said curve South 01°44'19" East a distance of 74.23 feet to the beginning of a tangent 20.00 foot radius curve concave northwesterly; 
Thence southwesterly along the arc of said curve through a central angle of 90°00'00" a distance of 31.42 feet; 
Thence tangent to said curve South 88°15'41" West a distance of 113.10 feet to the point of beginning.
Parcel 8

Lots 365 through 370 inclusive of North Point Unit 2 Map No. 8303 as filed in the Office of the County Recorder of San Diego County, in the City of San Diego, County of San Diego, State of California.

Parcel 9

Being that Portion of the Southwest Quarter of the Southwest Quarter of Section 29 Township 14 South, Range 2 West, San Bernardin Meridian in the City of San Diego, County of San Diego, State of California more particularly described as follows:

Beginning at the Northeast Corner of Lot 6 of Casa Mira View Map No. 9257 as filed in the Office of the County Recorder of said County;

Thence along the easterly line of said Lot 6, South 11° 04' 17" East 13.00 feet to the True Point of Beginning;

Thence leaving said easterly line South 06° 09' 09" West 301.77 feet;

Thence South 05° 23' 43" West 129.84 feet;

Thence South 05° 56' 02" West 196.13 feet;

Thence South 10° 39' 43" West 340.41 feet to an angle point in the easterly line of Lot 3 of said Map No. 9257;

Thence along the easterly line of Lots 3, 4, 5 and 6 of said Map 9257 North 7° 22' 03" East 299.61 feet;

Thence North 02° 42' 36" West 524.75 feet;

Thence North 24° 30' 01" East 250.79 feet;

Thence North 09° 53' 19" East 285.62 feet to the True Point of Beginning.

Parcel 10

Being a portion of the Northwest Quarter of the Northwest Quarter of Section 32 Township 14 South Range 2 West San Bernardin Meridian, in the City of San Diego, County of San Diego, State of California more particularly described as follows:

Beginning at the Southeast Corner of Lot 1 of Casa Mira View Map No. 9257 as filed in the Office of the County Recorder of said County;

Thence along the easterly lines of said Lot 1 and Lot 2 of said Map North 00° 32' 09" East a distance of 77.94 feet;

Thence North 49° 19' 03" East a distance of 417.34 feet;

Thence North 28° 21' 55" East a distance of 298.34 feet;

Thence leaving said easterly line of Lot 2 South 23° 33' 27" West a distance of 178.97 feet;

Thence South 30° 18' 46" West a distance of 102.57 feet;

Thence South 34° 27' 13" West a distance of 286.72 feet;

Thence South 36° 26' 33" West a distance of 143.87;

Thence South 88° 15' 44" West a distance of 85.00 feet to the Point of Beginning.

(2265) 10/3/88 IN:ms
ORDINANCE NUMBER O-
(NEW SERIES)
ADOPTED ON NOV 14, 1998

AN ORDINANCE APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND PARDEE CONSTRUCTION COMPANY.

WHEREAS, Pardee Construction Company ("Owner") is the legal or equitable owner of that certain real property consisting of approximately 260 acres located within the Mira Mesa community planning area; and

WHEREAS, The City of San Diego, a charter city, is authorized pursuant to Government Code Sections 65864 - 65869.5 to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process. The City further enters into this Development Agreement pursuant to its Charter and self-rule powers and San Diego Municipal Code Sections 105.0101 et seq. and Council Policy No. 600-37; and

WHEREAS, the parties desire to enter into this Development Agreement relating to the above-described real property in conformance with the provisions of the Government Code in order to achieve the development of private land uses together with the provision of public services, public uses, and urban infrastructure all in the promotion of the health, safety, and general welfare of the City of San Diego; and
ordinance. Failure of Owner to execute the Development Agreement within 30 days, shall render this action null and void. The City Clerk is directed to record said Development Agreement and this ordinance with the County Recorder of San Diego County within ten days after its execution.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED AS TO FORM ONLY:

John W. Witt, City Attorney

TFS:heg
09/13/89
Or.Dept:Plan
0-89-54
Form=o.devagr