

RESOLUTION PC 17-4644

A RESOLUTION OF THE CITY OF SAN MARCOS PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL APPROVE A TENTATIVE SUBDIVISION MAP (TSM 16-003) FOR CONSTRUCTION OF UP TO A MAXIMUM OF 220 CONDOMINIUM RESIDENTIAL UNITS ON A MAXIMUM OF THREE (3) RESIDENTIAL LOTS (LOTS 1, 2, & 3), ONE (1) LOT (LOT A) ESTABLISHED FOR PRIVATE DETENTION BASIN, AND ONE (1) REMAINDER LOT LOCATED ON APPROXIMATELY 39.01 ACRES TO BE DEVELOPED UNDER THE DISCOVERY VILLAGE SOUTH SPECIFIC PLAN

Case No. TSM 16-003 (P16-0037)  
H.G. Fenton Development Company LLC

WHEREAS, on September 7, 2016 an application was received from H. G. Fenton Development Company LLC requesting a General Plan Amendment (GPA 17-003), Specific Plan (SP 16-002), Tentative Subdivision Map (TSM 16-003) Site Development Plan (SDP 17-006), Grading Variance (GV 17-004) to allow residential develop of up to 220 dwelling units and approximately 39 acres of vacant land located north of Craven Road, south of the future Discovery Street, west of Rush Drive, and east of Bent Avenue more particularly described as:

ALL OR PORTIONS OF LOTS 1 AND 2 OF BLOCK 67, AND LOTS 8, 9, 10, 11, 12 AND 13 OF BLOCK 63 OF RANCHO LOS VALLECITOS DE SAN MARCOS, ACCORDING TO MAP THEREOF 806 AND PARCEL A OF MAP NO. 16595

Assessor Parcel Numbers: 221-080-18-00, 221-080-24-00, 221-080-19-00, 221-080-11-00, 221-070-20-00, 221-142-07-00, 221-080-23-00, 221-080-12-00, and 221-070-19-00

WHEREAS, the Planning Commission did consider and recommend approval of a Mitigated Negative Declaration (MND 16-001) in conjunction with recommending approval of General Plan Amendment (GPA 17-003, RESOLUTION PC 17-4642) pursuant to the California Environmental Quality Act; and

WHEREAS, the Development Services Department held a public workshop on October 5, 2017 for the proposed project; and

WHEREAS, the Development Services Department did study said request and does recommend approval of requested use; and

WHEREAS, the required public hearing held on February 5, 2018 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission did consider said Tentative Subdivision Map and the recommendation of its staff, the City Engineer, the Director of Public Health, the Director of the Department of Sanitation and Flood Control, and the Chief of the San Marcos Fire Department with respect thereto, and has determined that the conditions hereinafter enumerated are necessary to insure that the subdivision and the improvements thereof will conform to all ordinances, plans, rules, standards, and improvements and design requirements of the City of San Marcos; and

WHEREAS, the applicant/developer proposes to file a Final Map on said subdivision; and

WHEREAS, the Planning Commission's recommendation is based upon the following findings and determinations:

1. Said Tentative Subdivision Map (TSM 16-003) complies with the proposed Discovery Village South Specific Plan (SP 16-002).
2. The site is physically suitable for this type of subdivision and the proposed density of development is within the allowed density of the proposed Discovery Village Specific Plan.
3. As conditioned, the design of this subdivision and improvements will not cause public health problems.
4. The design or improvements will not conflict with any easements acquired by the public at large for access.
5. The proposed Tentative Subdivision Map (TSM 16-003) is in conformance with the goals, policies and objectives of the proposed Discovery Village South Specific Plan (SP 16-002), in that the design guidelines will result in a quality housing product blending in with the constraints of the site which insures better compatibility with the surrounding area.
6. The proposed Tentative Subdivision Map (TSM 16-003), as conditioned, will not be detrimental to the public health, safety, morals and welfare in that adequate public facilities and infrastructure including fire, police, water, sewer, drainage, and road capacity are being provided.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED as follows:

- A. The foregoing recitals are true and correct.
- B. Said Tentative Subdivision Map (TSM 16-003) complies with the requirements of the City Subdivision Ordinance, and the Subdivision Map Act.
- C. A Mitigated Negative Declaration (MND 16-001) was recommended for adoption pursuant to the California Environmental Quality Act covering potential impacts of the Tentative

Subdivision Map in conjunction with recommending approval of General Plan Amendment (GPA 17-003, RESOLUTION PC 17-4642).

- D. Said Tentative Subdivision Map (TSM 16-003) is hereby recommended for approval, pursuant to the City Subdivision Ordinance and no waiver of any requirement of said Ordinance is intended or implied except as specifically set forth in this Resolution.
- E. The approval of the Tentative Subdivision Map (TSM 16-003) expires within 24 months from date of the City Council approval. The Final Map conforming to this conditionally approved Tentative Subdivision Map (TSM 16-003) shall be filed with the City Council in time so that the Council may approve said maps before their expiration, unless prior to that date, the Planning Commission or City Council subsequently grants a time extension for the filing of the Final Map, or as provided for in the City's Subdivision Ordinance and the Subdivision Map Act. It is the applicant/developer's responsibility to track the expiration date. Failure to request an extension will result in a refiling of the Tentative Subdivision Map and new processing of the map.
- F. The Tentative Subdivision Map is recommended for approval to the City Council in conjunction with the submitted General Plan Amendment (GPA 17-003/PC Resolution 17-4642, MND 16-001) and Mitigated Negative Declaration, Specific Plan Amendment (SP 16-002/PC Resolution 17-4643), Site Development Plan (SDP17-006/PC Resolution 17-4646), and Grading Variance (GV 17-004/PC Resolution 17-4645). All conditions of said resolutions are hereby incorporated herein.
- G. General Provisions:
  - 1. Prior to submittal and approval of the Final Tentative Subdivision Map and/or any development permit (i.e. grading permit or within 180 days of the approval of the Tentative Map, whichever occurs first, the revised tentative map, landscaping plan, etc. shall be submitted as a digital file on a CD including this resolution as a title page. This title page shall include the statement "I (we), \_\_\_\_\_, the owner(s) or the owner's representative, have read, understand and agree to the conditions of the City Council approving GPA 17-003, SP 16-002, TSM 16-003, SDP 17-006, and GV 17-004." Immediately following this statement shall appear a signature block for the owner or the owner's representative which shall be signed. Signature blocks for the City's Planner and Civil Engineer shall also appear on this title page. The digital copy shall be approved by the City prior to any grading plan, improvement plan or final map submittal.
  - 2. The applicant/developer shall ensure prospective buyers sign disclosures identifying the property as being within the City's Community Facilities District for which there are additional tax assessments.
  - 3. The applicant/developer shall comply with all provisions and requirements set forth in the San Marcos Municipal Code, City ordinances, City policies and City

resolutions, and with all applicable state and federal regulations, whether or not such provisions or requirements have been specifically set forth in these conditions, all of which are now incorporated herein by reference and fully set forth at this point.

4. The approval of this project does not guarantee that potable water and/or sewer capacity will be available for the project at the time of grading permit application.
  5. The Homeowner's Association is required to provide written notification to the City when they assume water quality BMP maintenance responsibilities from the applicant/developer.
  6. All development standards shall be complied with per the approved San Marcos Discovery Village South Specific Plan as adopted under SP 16-002.
  7. The applicant/developer shall review and comply with all mitigation measures listed in Mitigated Negative Declaration (MND 16-001) and satisfy the mitigation monitoring program.
  8. The applicant/developer shall comply with all conditions as approved in GPA 17-003, SP 16-002, SDP 17-006, and GV 17-004 per Resolutions incorporated herein.
  9. Upon completion of project construction activities or when work is ceased for an extended period of time, areas disturbed and not stabilized by landscaping or development should be protected by appropriate BMPs and kept free of nonnative invasive species. Invasive plant species include any species identified as having a High inventory rating or Alert status by Cal-IPC and any plant determined by the project biologist to be a nuisance, causing potential detriment to native flora and/or fauna associated with San Marcos Creek (e.g., whitetop (*Lepidium draba*)).
  10. The applicant/developer shall record an overflight notification document in association with the approval of any new residential land use within the AIA overflight notification area consistent with the ALUCP. As adopted under the General Plan Safety Element under Goals S-7, Policy S-7.1, See Figure 6-5 McClellan-Palomar Airport Influence Area.
  11. The condominium air space lot sizes shall meet the minimum requirements of the Specific Plan for each plan type except as noted on Table 3 of the Discovery Village South Specific Plan.
- H. Prior to recordation or concurrent with a final map, the applicant/developer shall comply with the following conditions:
1. The applicant/developer shall establish Covenants, Conditions and Restrictions (CC&R's) for the proposed project and Homeowners Association (HOA) to assure the continued maintenance and operation of all open space and common areas,

recreational facilities and private improvements as follows:

- a. The applicant/developer and all persons, firms or corporations owning the property subject to this subdivision at the time of the recording of the Final Map~~s~~ and their heirs, administrators, executors, successors and assignees, shall operate, maintain and repair the open space, recreational facilities and private improvements for common use and benefit of the residents, approved by the City Council primarily for the benefit of the residents, and shall continue to operate, maintain and repair such open space, facilities, improvements for common use and benefit of the residents.
- b. The City Attorney shall approve the wording of by-laws and articles of incorporation of the proposed Homeowner's Association in writing prior to the creation of said Homeowner's Association.
- c. At the time said Final Map(s) is recorded in the Office of the County Recorder, there also shall be recorded a document signed by all persons, firms, and corporations having an interest in the property shown on said Final Maps and by the City of San Marcos. Said document shall be in a form satisfactory to the City Attorney of the City of San Marcos, shall provide for the enforcement of its terms by the City of San Marcos, and shall establish for the benefit of all property shown on said Final Maps, a restriction that the area to be used as open space and for recreational facilities be for the use and benefit of the occupants of the property shown on said Final Maps. Said document shall provide that said restriction shall run with the land and bind all owners of the property shown on said Final Maps and their successors for a period of 20 years from the date of recording the restriction, after which time the restriction shall be automatically extended for successive periods of 20 years, unless an instrument signed by a majority of the then owners of the dwelling lots and by the City of San Marcos has been recorded agreeing to change the restriction in whole or in part.
- d. At the same time the Final Maps are recorded, there shall also be recorded a document, signed by all persons, firms and corporations having an interest in the property shown on the Final Maps, whereby said persons, firms and corporations accept the terms and conditions of this Tentative Subdivision map and agree with the City of San Marcos to comply therewith. Said document shall be in a form satisfactory to the City Attorney of the City of San Marcos.
- e. CC&R's shall be approved by the City prior to recordation of the CC&Rs. CC&R's shall contain a provision that requires that private garages shall be used for the parking of cars in the designated interior area of 400 square feet for two vehicles. Said area cannot be used for storage other than a vehicle. This restriction shall also be incorporated as part of a Parking Management

Plan.

2. This project applicant/developer shall apply for an improvement permit complaint with SMMC 14.16. All plans submitted for improvements shall conform to applicable code and engineering handouts, unless explicitly superseded by the conditions contained herein. All appropriate fees shall be paid for the processing of the permit.
3. Improvement plans shall include the onsite proposed loop road and any CFD facilities. Plans may need to include the installation of a traffic signal and intersection improvements at Bent Avenue and Discovery Street should CIP Project No. 88623 not move forward. The intersection improvements may need to include street improvements west of the intersection to match existing conditions or City approved construction documents as determined by the City Engineer.
4. A note shall be added to the final map stating that the realignment of Craven Road, and improvements to Bent Avenue consistent with the traffic study shall be constructed and in operation prior to occupancy of the 107<sup>th</sup> structure within the development.
5. A note shall be added to the final map stating that the extension of Discovery Street from Bent Avenue to Twin Oaks Valley Road shall be completed to the satisfaction of the City Engineer prior to any occupancy of any building.
6. The Developer/applicant shall be responsible for bearing the costs of all grading activities, on-site and off-site improvements, labor, design, mitigation, or other costs associated with, but not limited to, the project's planning, engineering, construction and/or architecture for the project.
7. The applicant/developer shall dedicate to the City of San Marcos easements for utility purposes, slope access and maintenance, and all other interests in real property required by these conditions and as shown on the tentative map. All property or property interests shall be granted to the City free and clear of all liens and encumbrances and without cost to the City and free of environmental hazards, hazardous materials or hazardous wastes.
8. The applicant/developer shall enter into a Subdivision Improvement Agreement with the City to complete all required improvements. Securities and applicable fees for the construction of the improvements shall be submitted and approved in accordance with the San Marcos Municipal Code sections 19.16.070 and 19.16.080.
9. The Final Map shall include a statement to indicate that all streets, drainage, street

lights, street signage and striping improvements within the interior of this subdivision designated as private shall remain private and be maintained by a Individual Homeowners Association/Master Homeowners Association.

10. The applicant/developer shall mitigate for impacts on City services related to emergency response, traffic congestion, landscaping, and infrastructure maintenance. The mitigation shall be met through the execution of applications to annex the real property of the project into the following Community facilities Districts (CFD):

CFD 98-01 - Improvement Area No. 1 (Police Only)

CFD 98-02 – Lighting, Landscaping, Open Space and Preserve Maintenance

CFD 2001-01 – Fire and Paramedic

CFD 2011-01 – Congestion Management

Additionally, a Special Improvement Area shall be formed with respect to CFD 98-02 for the ongoing maintenance services provided by the city for improvements being installed above and beyond the City standards, installed by the applicant/developer as shown on the Special Improvement Area Exhibit. Such improvements include, but are not limited to, storm water treatment devices and enhanced landscaping features. No building permit to construct CFD facilities will be issued without receipt of a petition for annexation and consent and waiver executed by the property owners for each of the above-referenced Community Facilities Districts for the establishment of the special taxes. In lieu of annexation, the applicant/developer may pay a fee for each CFD consentient with the pre-payment option laid out in each CFD's formation documents. The applicant/developer shall be responsible for compliance with all rules, regulations, policies and practices established by State Law and/or the City with respect to the Community Facilities Districts including, without limitation, requirements for notice and disclosure to future owners and/or residents.

11. A phasing plan shall be submitted and approved by the City Engineer and Planning Division Manager prior to approval of the Final Map. The phasing plan may be subject to further conditions. Should the applicant/developer decide to develop phases out of numerical sequence with the approved phasing as shown on the plan, all conditions required of the proceeding phases shall be completed unless otherwise approved by the City Engineer and the Director of Planning. Other conditions may be imposed by the City Engineer and Planning Division Manager to allow out-of-phase construction.
12. The applicant/developer shall provide a signed disclosure for the remainder parcel for this subdivision. No building permit shall be issued for the remainder parcel until it is further subdivided. This note shall be placed on a separate sheet of the Final Map.

13. The project boundaries have been reviewed and deemed by the City's Floodplain administrator as falling within the FEMA special flood hazard area. No encroachment of the development shall be allowed within this area unless approved by the City's Floodplain Administrator. The applicant/developer shall design the site to be compliant with the provisions outlined in SMMC 20.255. For design not specified by the City's Municipal code, developer shall seek guidance from the Department of Homeland Security Federal Emergency Management Agency's (DHS-FEMA) technical memoranda on design. The applicant/developer shall bear the full responsibility of complying with floodplain management requirements as well as the processing of any floodplain/floodway re-mapping. The applicant/developer shall obtain approval of a Conditional Letter of Map Revision (CLOMR) from FEMA prior to Final Map approval or issuance of a grading permit.
14. The vacation of City held easements which are no longer necessary shall occur on the Final Map or by separate document. The applicant/developer shall compensate the City for any land owned in fee by the City. Compensation shall be in a form acceptable to the City Manager.
15. At the discretion of the City Manager, the applicant/developer shall obtain all interests in real property for all offsite public improvements and shall dedicate the same to the City. The applicant/developer shall also obtain temporary construction easements necessary to construct any offsite public improvements. The applicant/developer shall provide documentary proof satisfactory to the City that such easements or other interest in real property have been obtained prior to permit issuance.
16. Direct access rights to all parcels abutting Craven Road and Discovery Street shall be relinquished to the City on the Final Map except at the two project entrances and the one emergency access as shown on the Tentative Subdivision Map.
17. The applicant/developer shall submit a "Primary" street name and two (2) alternate names for each street shown on the Tentative Map. The names provided shall be subject to review and approval by the City's Street naming Committee. The selected street name(s) shall be shown on the final map(s).
18. A light emitting diode street lighting system shall be shown on the street improvement plans and shall be installed at locations specified by the City Engineer. All installations shall be compliant with the City's Street Lighting Standards.
19. Maintenance of private open space areas and slopes shall be the responsibility of an Individual Homeowners Association/Master Homeowners Association. All

remaining open space lots, improvements and slopes that the City agrees to maintain must comply with City's criteria for maintenance for the Community Facility District No. 98-02 (Lighting, Landscaping, Open Space and Preserve Maintenance)

20. All utilities fronting, abutting or within the project shall shown on the improvement plans to be relocated underground with the exception of sixty-nine (69) KVA or greater power lines. All utility undergrounding must be completed prior to the surfacing of the streets. Undergrounding must accommodate all pad mounted and pedestal equipment consistent with General Plan Goal LU 17.3. Where the underground of such equipment is not possible due to safety or lack of standards for such undergrounding, the applicant/developer shall provide an underground vault, in-building vault room, architecturally integrated screen wall around equipment, or other option approved by the Planning Division Manager.
  21. The applicant/developer shall be responsible for acquiring all associated easements required by the utility companies for such work. The permanent placement of Vallecitos Water District's large meter services, detector checks, fire hydrants, etc., along circulation element streets shall be placed outside of the ultimate right-of-way and if applicable, trail easement, to avoid reconstruction or modification of same.
  22. The applicant/developer shall comply with all rules, regulations and design requirements of the respective sewer, water, utility, regional, federal or other approving agency regarding the installation, modification, development, improvement or protection of facilities within the project boundaries. It shall be the applicant/developer responsibility to determine all agencies with rights of approval for the proposed development.
- I. Prior to issuance of a grading permit, the applicant/developer shall comply with the following conditions:
1. A detailed landscape and irrigation plan prepared by a licensed landscape architect shall be submitted to the City of San Marcos for review and approval for graded area affecting CFD, HOA, and private landscape areas. Each plan shall address proposed phasing of Planning Areas 1, 2, & 3 as each development Area comes forward. Upon completion of the separate landscape improvements areas, the licensed professional shall submit a letter to the City stating that all materials have been installed in accordance with the approved plans prior to issuance of occupancy permits.
  2. The applicant/developer shall submit separate HOA & private landscape plan(s) that complies with all requirements stated in the Water Efficiency Landscape Ordinance (WELO) and comply with the latest State adopted WELO. Additionally,

the landscape plans are required to install water efficient non-spray irrigation in all planting areas adjacent to roadways, lanes or alleys.

3. Final landscaping and irrigation plans shall be submitted for review and final approval by the City after addressing review comments on the initial landscape plans. Landscape plan submittals are to be prepared and signed by a licensed professional. Landscape plan check fees shall be paid based on 2% of the landscape professional's estimate (cost of materials & installation) for initial plan check and 2.5% of the landscape professional's estimate for the landscape permit and one field inspection.
4. The compensatory mitigation of impacts to regionally sensitive native and naturalized habitats within the proposed project site, consisting of southern willow scrub, coastal and valley freshwater marsh, herbaceous wetland, alkali marsh, Diegan coastal sage scrub, valley needlegrass grassland, and non-native grassland involves the implementation of habitat-based land conservation in accordance with Table 3.4-1. The mitigation ratios presented in Table 3.4-1 are subject to review by the resource and regulatory agencies.
  - a) Mitigation for impacts to southern willow scrub, coastal and valley freshwater marsh, herbaceous wetland, and alkali marsh could occur through a combination of the following: establishment/re-establishment or establishment/re-establishment combined with enhancement, rehabilitation, and/or preservation; however, the mitigation cannot result in a net-loss of habitat or biological functions and values. Mitigation for impacts to Diegan coastal sage scrub, valley needlegrass grassland, and non-native grassland could occur through a combination of establishment/re-establishment or establishment/re-establishment combined with enhancement, rehabilitation, and/or preservation.
  - b) Mitigation may be achieved via onsite mitigation and/or offsite mitigation at a City approved mitigation site and/or purchase of habitat credits from a resource and regulatory agency approved mitigation bank (typically required to be within the same watershed as the proposed project impact). If habitat credits cannot be purchased in an existing mitigation bank, then permittee-responsible off-site mitigation would be required. Mitigation may occur via preservation within the San Marcos Creek corridor or north of the Biological Study Area (BSA). Permittee responsible offsite mitigation would require the following: preparation of a compensatory mitigation and monitoring plan, preparation of a long-term resource management plan, open space easement, selection of a resource manager, and establishment of an endowment to ensure funding of annual ongoing basic stewardship costs.
5. In those areas where grading variances are approved, increased development

standards for landscape and special grading techniques shall be applied. Graded slopes shall be contoured to provide a smooth transition with existing slopes. All slopes shall be designed and graded in accordance with the City's Grading Ordinance, particularly with respect to terraces, drainage, access, erosion control and setbacks.

6. Blasting operations, if applicable, shall be done in conformance with Chapter 17.60 of the San Marcos Municipal Code.
7. The applicant/developer shall submit for a grading permit in accordance with the San Marcos Municipal Code section 17.32 and all related Engineering Division handouts. All applicable fees and securities shall be paid prior to grading permit issuance.
8. Erosion control and/or sediment control details shall be submitted with/on the grading plans to the City's Engineering Division for review and approval. The details shall conform to City standards, codes, SDRWQCB Municipal Stormwater Permit requirements, and ordinances. The details shall include landscaping and temporary irrigation systems on exposed slopes to be approved by the City's Engineering and Planning Divisions.
9. A hydrology and hydraulic report, including calculations, shall be prepared for the proposed project to determine the existing and post-development runoff for the 100-year storm conditions. Storm drains and drainage structures shall be sized for build-out according to the approved hydrology report. All surface runoff originating within the project and all surface waters that may flow onto the project from adjacent properties shall be accommodated by the drainage system. The report shall also determine the buildout runoff into existing off-site natural drainage swales and storm drain systems, and shall address any need for off-site improvements, including upsizing of existing facilities. Blocking, concentrating, lowering or diverting of natural drainage from or onto adjacent property shall not be allowed without written approval of the affected property owner(s).
10. A Storm Water Quality Management Plan (SWQMP) shall be submitted in accordance with the most current version of the City adopted BMP design manual and meet the requirements of California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001.
11. The applicant/developer shall enter into a Storm Water Management and Discharge Control Maintenance Agreement and Easement for the maintenance of all structural post-construction stormwater management improvements. The agreement and easement shall be in a form acceptable to the City Attorney.
12. A letter of permission shall be provided from the property owner for any grading

or improvements outside of the subdivision boundary.

13. A Stormwater Pollution Prevention Plan or similar should be developed for the project and Best Management Practices (BMPs) implemented to control erosion and export of sediment from the site during storm events.
14. Environmental training should be provided for contractors and construction personnel by the project biologist prior to the start of construction work, should be repeated if gaps in construction operations are required, and should be provided annually thereafter.
15. Prior to the start of mass clearing and grubbing of habitat, temporary fencing (e.g., orange silt fence, orange snow fence, etc.) should be installed along the perimeter of the project footprint to prevent inadvertent disturbance to adjacent biological resources. Installation of perimeter control may require removal of vegetation using handheld equipment.
16. Temporary fencing should be installed and maintained by the contractor under direction of the project biologist and construction manager.
17. BMPs proposed for the project should not include any species listed by the California Invasive Plant Council (Cal-IPC) in the California Invasive Plant Inventory.
18. Temporary night lighting, if required, should be downcast/fully shielded and directed away from adjacent habitat.
19. The compensatory mitigation of impacts involves the implementation of habitat based land conservation in accordance with MND 16-001. Specifically, the applicant/developer should mitigate for impacts to gnatcatcher occupied habitat via onsite mitigation and/or mitigation at a City approved mitigation site and/or purchase, at a 2:1 mitigation ratio, 10.42 acres of gnatcatcher-occupied habitat, from a resource agency approved mitigation bank.
20. Clearing and grubbing in or within 300 feet of gnatcatcher-occupied habitat should occur from September 1 (or sooner if a resource agency approved biologist demonstrates to the satisfaction of the resource agencies that all nesting is complete) to February 14 to avoid the gnatcatcher breeding season.
21. Impacts to jurisdictional resources consisting of southern willow scrub, coastal and valley freshwater marsh, herbaceous wetland, and alkali marsh would require acquisition of the following permits and approvals, or demonstration to the City Planning Manager that such approvals are not required:

- a. A Clean Water Act Section 404 permit for discharge of dredged or fill material within waters of the United States;
  - b. A Clean Water Act Section 401 state water quality certification for an action that may result in degradation of waters of the State, and;
  - c. A Streambed Alteration Agreement issued under Section 1602 of the California Fish and Game Code.
- 22. To avoid impacts to nesting migratory birds and raptors, all clearing, grubbing, and/or grading of vegetation that has a potential to support active nests should not take place from January 1 through September 15, the “restricted work period.” If avoidance of the nesting migratory bird breeding season is not feasible, clearing, grubbing and/or grading of vegetation may occur during the “restricted work period” if a qualified biologist conducts a focused survey for active nests within (approximately) 48 hours prior to work in the area and determines the area to be free of nesting birds. If active bird nests were found, then all construction activities undertaken for the project must comply with regulatory requirements of the federal MBTA and California Fish and Game Code Sections 3503 and 3513. This would require protection of the nest, eggs, chicks, and adults until such time as the nestlings have fully fledged and are no longer dependent upon the nest site.
- 23. The pre-blast survey shall be conducted for structures within a minimum radius of 500 feet from the identified blast site to be specified by the applicant/developer. Sensitive receptors that could reasonably be affected by blasting shall be surveyed as part of the pre-blast survey. Notification that blasting would occur shall be provided to all owners of the identified structures to be surveyed prior to commencement of blasting. The pre-blast survey shall be included in the final blasting plan.
- 24. The blasting plan shall outline the anticipated blasting procedures for the removal of rock material at the proposed locations. The blasting procedures shall incorporate line control to full depth and controlled blasting techniques to create minimum breakage outside the line control and maximum rock fragmentation within the target area. Prior to blasting, all applicable regulatory measures shall be met. The applicant/developer, or its subcontractor (as appropriate), shall keep a record of each blast for at least 1 year from the date of the last blast.
- 25. Milling features shall be preserved in place, if possible, or shall be relocated to onsite open space or landscaped areas prior to disturbance, if feasible, and as reflected in the Cultural Resource Treatment and Monitoring Agreement.
- J. Prior to issuance of a permit to allow any clearing, grubbing, and/or grading the applicant/developer shall comply with the following conditions:

1. The planting palette for all proposed development uses onsite (e.g., residential lots, detention basins, etc.) should not include any species listed by CalIPC in the California Invasive Plant Inventory.
2. Prior to beginning project construction, the applicant/developer shall retain a San Diego County qualified archaeological monitor to monitor all ground-disturbing activities in an effort to identify any unknown archaeological resources. Any newly discovered cultural resource deposits shall be subject to cultural resources evaluation, which shall include archaeological documentation, analysis and report generation.
3. The applicant/developer shall enter into a Cultural Resource Treatment and Monitoring Agreement (also known as a pre-excavation agreement) with a Luiseño Tribe at least thirty (30) days prior to beginning project construction. The Agreement shall address the treatment of known cultural resources, the designation, responsibilities, and participation of professional Native American Tribal monitors during grading, excavation and ground disturbing activities; project grading and development scheduling; terms of compensation for the monitors; and treatment and final disposition of any cultural resources, sacred sites, and human remains discovered on site.
4. Prior to beginning project construction, the Project Archaeologist shall file a pre-grading report with the City to document the proposed methodology for grading activity observation, which will be determined in consultation with the contracted Luiseño Tribe. Said methodology shall include the requirement for a qualified archaeological monitor to be present and to have the authority to stop and redirect grading activities. In accordance with the required Agreement, the archaeological monitor's authority to stop and redirect grading will be exercised in consultation the Luiseño Native American monitor in order to evaluate the significance of any archaeological resources discovered on the property. Tribal and archaeological monitors shall be allowed to monitor all grading, excavation, and groundbreaking activities, and shall also have the authority to stop and redirect grading activities. If the applicant/developer, the Project Archaeologist, and the Tribe cannot agree on the significance of the mitigation for such resources, these issues will be presented to the Planning Division Manager for decision.
5. The pre-construction meeting with the applicant/developer, contractor, and City staff shall include the Project Archaeologist and Tribal Monitor in discussion of the proposed earth disturbing activities for the project site, including excavation schedules and safety protocol, as well as consultation with the Project Archaeologist regarding proposed archaeological techniques and strategies for the project.

6. All grubbing shall be controlled in areas of concern as determined by the Project Archaeologist and the Luiseño Native American monitor, and as reflected in the Treatment and Monitoring Agreement developed in consultation with the Luiseño Tribe, and shall be inspected by the Project Archaeologist and Luiseño Native American monitor prior to initiating grading for those areas. Grading shall be controlled within the area of CA-SDI-11809 and San Marcos Creek using a slope board or similar equipment to allow soil to be removed in increments of only a few inches at a time. Other areas which may require controlled grading shall be determined by the Project Archaeologist and the Luiseño Native American monitor, as reflected in the Treatment and Monitoring Agreement developed in consultation with the Luiseño Tribe.
- K. During grading activities, the applicant/developer shall comply with the following conditions:
1. Prior to any construction, the Public Works Inspector shall conduct a pre-construction meeting in which a representative from the Planning Division and the project biologist and archeologist shall attend.
  2. During grading the owner/developer/contractor shall implement and maintain the storm water pollution prevention measures as required on the approved plans. Violations of the City's Storm Water Management Ordinance will result in Stop Work Orders, Notices of Violation and citations with fines. Work on the project may be delayed until the City determines that the project is in compliance with the storm water requirements.
  3. Dust and dust producing materials shall be controlled within the maximum acceptable concentrations for silica and silicates in accordance with the California Code of Regulations, Title 8, Section 5155. Water and dust palliative shall be used to prevent excessive dust during blasting, construction and grading operations. Projects are required to comply with the Air Pollution Control District's standards for mitigating fugitive dust during all phases of construction.
  4. A monitoring biologist should inspect and oversee installation of temporary perimeter fencing and should be on site full-time during the initial clearing and grubbing of habitat, and should conduct weekly inspections thereafter during grading operations to ensure compliance with the project biological requirements. The biologist should be knowledgeable about upland and wetland biology and ecology, possess a bachelor's degree in a biological related field, and have at least 2 years of experience in field biology or current certification of a nationally recognized biological society. In lieu of the above qualifications, a resume should demonstrate to the satisfaction of the City that the proposed biologist has the appropriate training and background to effectively implement the recommended construction period mitigation and monitoring measures. The biologist should

have the authority to halt construction activities, if needed and should report any violation to the City within 48 hours of detection.

5. If least Bell's vireo nesting territories are determined to be present within 300 feet of construction activities during the breeding season for this species (April 10 to July 31), then noise generated from construction activities should be kept below 60 A-weighted decibels (dBA) hourly average at the edge of the riparian canopy or below ambient levels if ambient is determined to be louder than 60 dBA.
6. A San Diego County qualified archeological monitor and a Luiseño Native American monitor shall be present during all earth moving and grading activities to assure that any potential cultural resources, including tribal, found during project grading be protected.
7. The import of fill onto the site shall be clean of cultural resources and documented as such.
8. The landowner shall relinquish ownership of all cultural resources collected during the grading monitoring program and from any previous archaeological studies or excavations on the project site to the appropriate Tribe for proper treatment and disposition per the Cultural Resources Treatment and Monitoring Agreement. All cultural materials that are deemed by the Tribe to be associated with burial and/or funerary goods will be repatriated to the Most Likely Descendant as determined by the Native American Heritage Commission per California Public Resources Code Section 5097.98. In the event that curation of cultural resources is required, curation shall be conducted by an approved facility and the curation shall be guided by California State Historic Resource Commissions Guidelines for the Curation of Archaeological Collections. The City of San Marcos shall provide the applicant/developer final curation language and guidance on the project grading plans prior to issuance of the grading permit, if applicable, during project construction.
9. All sacred sites, should they be encountered within the project area, shall be avoided and preserved as the preferred mitigation, if feasible. If human remains are encountered, California Health and Safety Code Section 7050.5 states that no further disturbance shall occur until the San Diego County Coroner has made the necessary findings as to origin. Further, pursuant to California Public Resources Code Section 5097.98(b) remains shall be left in place and free from disturbance until a final decision as to the treatment and disposition has been made. Suspected Native American remains shall be examined in the field and kept in a secure location at the site, and if the San Diego County Coroner determines the remains to be Native American, the Native American Heritage Commission (NAHC) must be contacted within twenty-four (24) hours. The NAHC must then immediately notify the "most likely descendant(s)" of receiving notification of the discovery.

The most likely descendants(s) shall then make recommendations within forty-eight (48) hours, and engage in consultation concerning treatment of remains as provided in Public Resources Code 5097.98. If inadvertent discoveries of subsurface archaeological/cultural resources are discovered during grading, the applicant/developer, the Project Archaeologist, and the Luiseño Tribe under the required Agreement with the landowner shall assess the significance of such resources and shall meet and confer regarding the mitigation for such resources. Pursuant to California Public Resources Code Section 21083.2(b) avoidance is the preferred method of preservation for archaeological resources. If the applicant/developer, the Project Archaeologist and the Tribe cannot agree on the significance of mitigation for such resources, these issues will be presented to the Planning Division Manager for decision. The Planning Division Manager shall make a determination based upon the provisions of the California Environmental Quality Act with respect to archaeological resources and shall take into account the religious beliefs, customs, and practices of the Tribe. Notwithstanding any other rights available under law, the decision of the Planning Manager shall be appealable to the Planning Commission and/or City Council.

10. The applicant/developer shall contact the Viejas Tribal Government or other Kumeyaay tribe designee to provide: 1) a project construction schedule; 2) any project schedule changes; 3) accommodation of a Kumeyaay monitoring during project construction; and 4) outreach if there are any inadvertent discoveries during project construction.
11. The project contractor shall, to the extent feasible, schedule construction activities to avoid the simultaneous operation of construction equipment so as to minimize noise levels resulting from operating several pieces of high noise level emitting equipment.
12. All construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers. Enforcement shall be accomplished by random field inspections by applicant/developer personnel during construction activities, to the satisfaction of the City Development Services Department.
13. Construction noise reduction methods such as shutting off idling equipment, construction of a temporary noise barrier, maximizing the distance between construction equipment staging areas and adjacent residences, and use of electric air compressors and similar power tools, rather than diesel equipment, shall be used where feasible.
14. During construction, stationary construction equipment shall be placed such that emitted noise is directed away from or shielded from sensitive receptors.
15. Construction hours, allowable workdays, and the phone number of the job

superintendent shall be clearly posted at all construction entrances to allow surrounding property owners to contact the job superintendent if necessary. In the event the City receives a complaint, appropriate corrective actions shall be implemented and a report of the action provided to the reporting party.

16. The final blasting plan shall address air-blast limits, ground vibrations, and maximum peak particle velocity for ground movement, including provisions to monitor and assess compliance with the air-blast, ground vibration, and peak particle velocity requirements. The blasting plan shall meet criteria established in Chapter 3 (Control of Adverse Effects) in the Blasting Guidance Manual of the U.S. Department of Interior Office of Surface Mining Reclamation and Enforcement.
  17. All grading shall be supervised by a Geotechnical Engineer, who shall prepare a written report to the satisfaction of the City Engineer certifying that the work has been performed in compliance with the recommendations contained within the geotechnical report and on the approved project plans. If not so done, the report shall describe the actual work performed and any deficiencies observed.
- L. Prior to acceptance of public improvements, completion of grading, and/or release of securities, the applicant/developer shall comply with the following conditions:
1. A final geotechnical report shall be provided to the engineering inspector to specifically detail conditions and remedial work performed that was not specifically identified in the initial report of subsurface conditions.
  2. A certificate of line and grade, signed and stamped by the engineer of work, shall be provided to the engineering inspector prior to security release. The certificate shall be in a form acceptable to the City Engineer.
  3. The applicant/developer shall file a Letter of Map Revision based on Fill (LOMR-F) or Letter of Map Revision (LOMR) and provide all supporting documentation provided to DHS-FEMA to the City's Floodplain Administrator.
  4. All applicable easements and agreements shall be recorded prior to release of project securities.
  5. As-Built drawings shall be submitted to the Engineering Division for review and approval. All improvements identified on the plans and all undergrounding of utilities shall be completed in accordance with the project plans and these conditions of approval. Record drawing mylar plans shall be submitted and approved prior to the release of any project securities.
  6. The applicant/developer shall maintain all CFD projects as outlined in the City's

“Two-Year Maintenance & Establishment” guidelines. As a condition to begin this period, Developers shall provide the City with a signed copy of the maintenance contract to cover the two-year requirement and also provide the City with a Maintenance Bond to cover 150% of the maintenance to cover the balance.

- M. The applicant/developer shall comply with adopted conditions per GPA 17-003, SPA 16-002, SDP 17-006, and GV 17-004, and mitigations as adopted in MND 16-001.
- N. To the extent permitted by law, applicant/developer shall defend and hold the City of San Marcos ("City"), its agents and employees harmless from liability from: (i) any and all actions, claims damages, injuries, challenges and/or costs of liabilities arising from the City's approval of any and all entitlements or permit arising from the project as defined in the Tentative Subdivision Map; (ii) any damages, liability and/or claims of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operation of applicant/developer or its contractors, subcontractors, agents, employees or other persons acting on applicant/developer's behalf which relate to the project and (iii) any and all damages, liability and/or claims of any kind arising from operation of the project. The applicant/developer further agrees that such indemnification and hold harmless shall include all defense-related fees and costs associated with the defense of City by counsel selected by City. This indemnification shall not terminate upon expiration of the Tentative Subdivision Map, but shall survive in perpetuity.
- O. To the extent feasible and as permitted by law, applicant/developer and contractors are requested to first consider the use of San Marcos businesses for any supplies, materials, services and equipment needed and the hiring of local residents in order to stimulate the San Marcos economy to the greatest extent possible.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, State of California, at a regular meeting thereof, this 5th day of February, 2018 by the following roll call vote:

YES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

APPROVED:

\_\_\_\_\_, Chairman  
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

---

Sandra Gallegos, Senior Office Specialist  
SAN MARCOS CITY PLANNING COMMISSION