

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA ADOPTING A SPECIFIC PLAN FOR THE LOS PORTALES SPECIFIC PLAN AREA ( "SP-10 ZONE") FOR PROPERTY LOCATED AT 535 E. MONTECITO STREET, ASSESSOR'S PARCEL NUMBER 031-351-010.

WHEREAS, the City accepted an application from Bermant Development Company, in order to process a request for the following: 1) Modification to allow less than the required number of guest parking spaces; 2) a Tentative Subdivision Map (TSM) to create a one-lot subdivision for 48 residential condominium units, including 40 price-restricted and eight market-rate units; and 3) Zoning Ordinance Amendment to adopt Specific Plan Number Ten (SP-10);

WHEREAS, the City Council initiated the Specific Plan process for the subject parcel on May 4, 2004;

WHEREAS, on August 21, 2008, the Planning Commission held a public hearing and certified the Final Environmental Impact Report and approved the Modification and Tentative Subdivision Map contingent upon adoption of an Ordinance approving the Specific Plan by the City Council; and

WHEREAS, the purpose of the Los Portales Specific Plan is to establish a zoning overlay to allow a below-market rate residential development in the M-1 zone. The boundaries of the real property included in the Los Portales Specific Plan are described in the attached Exhibit A and is incorporated herein by reference. This Los Portales Specific Plan is intended to set out development policies and actions for this real property which compose the Plan area.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

**SECTION ONE:** The City Council has considered the Los Portales Specific Plan Final Environmental Impact Report (EIR), certified by the Planning Commission on August 21, 2008, and makes the following findings and determinations pursuant to Public Resources Code Section 21081 and California Environmental Quality Act Guidelines Section 15090.

1. The Final Environmental Impact Report for the proposed project was presented to the Planning Commission of the City of Santa Barbara. The Planning Commission reviewed and considered the information contained in the Final Environmental Impact Report, along with public comment and responses to comments.

2. The Final Environmental Impact Report for the proposed project has been completed in compliance with the California Environmental Quality Act and Guidelines, reflects the Council of the City of Santa Barbara's independent judgment and analysis, and constitutes adequate environmental evaluation and documentation for the proposed project.
3. The location and custodian of documents and materials that constitute the record of proceedings upon which this decision is based is the City of Santa Barbara Community Development Department, Planning Division, 630 Garden Street, Santa Barbara, CA, which is also the Lead Agency.
4. A mitigation monitoring and reporting program (MMRP) is hereby adopted. Mitigation measures have been made enforceable through incorporation into the project description or are included as conditions of project approval.
5. Class I Impacts (Significant and Unavoidable). The project would result in the following significant and unavoidable impacts identified in the Final EIR. These findings are supported by substantial evidence in the record including the Final EIR.
  - a. Cumulative Traffic Impacts. The proposed project would result in a significant and unavoidable cumulative traffic impact at the Gutierrez Street/Garden Street intersection and at the Garden Street/U.S. 101 northbound ramps intersection. The Gutierrez Street/Garden Street intersection is expected to operate at level of service "D" during the morning and evening peak hours under cumulative conditions, and the project would add 14 morning peak hour trips and 12 evening peak hour trips to the intersection. The U.S. 101 northbound ramps/Garden Street intersection is expected to operate level of service "D" during the evening peak hour under cumulative conditions and the proposed project would add 10 evening peak hour trips to the intersection. No feasible mitigation measures were identified that would mitigate these impacts to a less than significant level.
  - b. Parking Impacts. The proposed project would provide two onsite guest parking spaces. Based on estimates of the project's demand for guest parking spaces, the project would need to use on-street parking for guest needs during the evening hours. Although recent parking surveys indicated that adequate on-street parking would be available to serve the project, it cannot be ensured that adequate on-street parking would remain available over the life of the project. Therefore, the project would have the potential to result in a significant parking impact. No feasible mitigation measures were identified to fully avoid these impacts; however, the off-site parking alternative may be feasible if the applicant were to execute an off-site parking agreement with the adjacent property owner.
6. Class II Impacts (Potentially Significant and Mitigated). Project elements incorporated as part of the project description and mitigation measures applied as conditions of project approval would result in the avoidance or substantial lessening of the following environmental impacts to less than significant levels.

These findings are supported by substantial evidence in the record including the Final EIR.

- a. Air Quality: The proposed project would result in dust emissions during construction activities. This impact would be reduced to a less than significant level with implementation of standard dust control mitigation measures.
  - b. Biological Resources: The proposed project would result in the removal of skyline specimen trees located on the project site. This impact would be reduced to a less than significant level with the installation of replacement skyline trees.
  - c. Geologic Hazards: The proposed project has the potential to be affected by ground shaking and other seismic hazards. This impact would be reduced to a less than significant level with the implementation of the recommendations in the Geotechnical Engineering Report, including the use of vibro-replacement stone columns, compaction grouting, deep compaction and/or use of geopiers, as well as compliance with building code requirements that would minimize potential hazards associated with ground shaking.
  - d. Noise: Interior noise levels within units fronting or facing East Montecito Street, adjacent to Calle Cesar Chavez and adjacent to the western project boundary may exceed 45 dBA. This impact would be reduced to a less than significant level with the implementation of the requirement that forced air circulation must be provided for these units.
  - e. Water Resources: The proposed project has the potential to result in significant short- and long-term water quality impacts. These impacts would be reduced to a less than significant level with the implementation of erosion control measures, compliance with standard City requirements, and the use of storm drain surface pollutant interceptors.
7. Class III Impacts (Less than Significant). The proposed project would result in a less than significant impact in the following environmental issue areas identified in the Final EIR. Mitigation measures are incorporated as conditions of project approval to further reduce the level of impact, consistent with City policies. These findings are supported by substantial evidence in the record including the Final EIR.
- a. Aesthetics: The proposed project could result in adverse but less than significant aesthetics and lighting impacts. The project would not change existing skyline views as seen from Highway 101 nor would it significantly obstruct or change scenic views of the mountains and hillside areas of the City but would add building mass in close proximity to the highway. The project is subject to review and approval by the Architectural Board of Review, which will result in further aesthetic improvements.
  - b. Air Quality: Project-related grading and construction activities would result in emissions of NO<sub>x</sub> and PM<sub>2.5</sub> from construction equipment that would

be well below the established threshold of significance. Standard dust control measures to further reduce potential impacts are included in the Conditions of Approval. Therefore, the proposed project is anticipated to have a less than significant long-term air quality impact.

- c. Public Services: The proposed project would result in the short-term generation of construction and demolition waste, and long-term generation of waste from residential uses. The project specific impact is considered less than significant because the 196 tons per year threshold is not exceeded, however, an adverse cumulative impact would result because waste generation would exceed 40 tons per year.

Project grading would require some export of non-structural fill. Construction-related waste generation would be short-term and less than significant. Application of recommended standard mitigation to reduce, re-use, and recycle construction waste to the extent feasible would minimize this effect.

- d. Transportation/Circulation: The proposed project would result in a short-term increase in traffic due to construction-related activities. This would constitute a change to existing conditions but would be a less than significant effect, and would be further reduced by construction haul route and parking mitigation measures.

- 8. Findings of Infeasibility of Alternatives (per PRC Section 21081 and CCR Section 15091). The Council of the City of Santa Barbara finds that specific economic, legal, social, technological, environmental, or other considerations make infeasible the project alternatives identified in the Final Environmental Impact Report for the proposed project for the following reasons:

- a. Project Alternative 8.1.1 - No Project - No Development: The project site would remain in a vacant condition, existing traffic conditions would continue to occur, and the cumulative traffic impacts of the proposed project would be avoided. The No Project - No Development Scenario alternative is the environmentally superior alternative; however, this alternative would not attain any of the proposed projects' objectives.
- b. Project Alternative 8.1.2 - No Project - Allowable Site Development: This scenario would result in the development of either a light industrial or manufacturing use on the project site. The establishment of a manufacturing use would result in a slight reduction in average daily trips and peak hour traffic when compared to the proposed project. However, both alternative uses would result in significant cumulative traffic impacts at the Garden Street/Gutierrez Street intersection and the U.S. 101 northbound ramps/Garden Street intersection. This alternative would not attain any of the proposed projects' objectives.
- c. Project Alternative 8.1.3 - Reduced Project Size: The Reduced Project Size alternative would result in the development of fewer units at the project site. If only 19 units were provided, this alternative would not result

in a significant cumulative traffic impact at the U.S. 101 northbound ramps/Garden Street intersection during the morning or evening peak hours, but a significant cumulative impact would continue to occur at the Garden Street/Gutierrez Street intersection. If only 13 units were provided, this alternative would not result in a significant cumulative impact at the Garden Street/Gutierrez Street intersection or the U.S. 101 northbound ramps/Garden Street intersection during the morning or evening peak traffic hours. The Reduced Project size alternative is the only alternative evaluated that might partially achieve the primary objective of the proposed project to develop residential units on the project site and reduce the project's cumulative traffic impacts to a less than significant level. Therefore, the Reduced Project Size alternative is environmentally superior to the proposed project; however, this alternative is not economically feasible nor would it result in any affordable housing units and would thus not meet the project objectives.

- d. Project Alternative 8.1.4 - Purchase Parking: The Purchase Parking alternative would provide additional parking spaces on the project site, and could reduce the demand for on-site parking. However, this alternative would also have the potential to result in significant parking impacts in neighborhoods adjacent to the project site. The Purchase Parking alternative could reduce the number of peak hour vehicle trips generated by the project, which would minimize the project's cumulative impacts at the Garden Street/Gutierrez Street and U.S. 101 northbound ramps/Garden Street intersections. This alternative, however, would not be capable of reducing the project's cumulative traffic impacts to a less than significant level. In addition, this alternative includes combining four buildings into two, resulting in a design with mass, bulk and scale issues and which would be contrary to the City's Urban Design Guidelines and comments made by the Planning Commission and Architectural Board of Review to reduce the mass and provide more open space.
- e. Project Alternative 8.1.5 - Project Redesign: The Project Redesign alternative would combine elements of the Purchase Parking and Reduced Project Size alternatives. The Project Redesign alternative identifies the maximum number of residential units that could be developed on the project site without resulting in a significant cumulative traffic impact based on varying levels of project occupant participation in a purchase parking program. The Project Redesign alternative could feasibly reduce the project's cumulative traffic impacts to a less than significant level while allowing the development of more units on the project site than would be allowed by the Reduce Project Size alternative. However, if an assumed participation rate in a purchase parking program were not maintained over the life of the project, the units developed on the project site would have the potential to result in a significant cumulative traffic impact at the Garden Street/Gutierrez Street and U.S. 101 northbound ramps/Garden Street intersections. This alternative would also have the potential to result in parking impacts to areas surrounding

the project site. Therefore, the Project Redesign alternative was not considered to be an environmentally superior alternative. This alternative is also not economically feasible, nor would it result in any affordable housing units and would thus not meet the project objectives

- f. Project Alternative 8.1.6 - Off-site Parking: The Off-Site Parking alternative could reduce the significant parking impacts of the proposed project to a less than significant level by providing guest parking spaces at a lot neighboring the project. However, at this time, no agreement has been reached with neighboring landowners for permanent, long term parking offsite. Therefore, it has not been demonstrated at this time if the alternative would be feasible to implement. In addition, this alternative would not address the cumulative traffic impacts of the project and impacts to the U.S. 101 northbound ramps at Garden Street, and the Gutierrez Street/Garden Street intersection.

## 9. Statement of Overriding Considerations

After careful consideration of the environmental documents, staff reports, public testimony, and other evidence contained in the administrative record, the Council of the City of Santa Barbara has balanced the benefits of the project against the unavoidable environmental impacts and has concluded that the benefits of the project outweigh the significant cumulative traffic and parking impacts sufficiently to make the adverse effects acceptable. The Council of the City of Santa Barbara makes the following Statement of Overriding Considerations, which support approval of the project, notwithstanding that all identified environmental impacts are not fully mitigated to a level of insignificance. Remaining significant effects on the environment are deemed acceptable due to the following finding:

The project would provide below-market rate housing units for homebuyers and would provide an important and needed housing type in the City that may not otherwise be provided.

## 10. Findings for the Fish & Game Code

An Environmental Impact Report has been prepared by the City of Santa Barbara, which has evaluated the potential for the proposed project to result in adverse effects, either individually or cumulatively, on wildlife resources. For this purpose, wildlife is defined as "all wild animals, bird, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability." The proposed project has the potential for adverse effects on native specimen trees and associated wildlife during project construction. Mitigation measures have been applied such that potential impacts will largely be reduced to less than significant levels, and a Statement of Overriding Considerations has been made for those impacts that can not be reduced to less than significant levels. The project does not qualify for a waiver and is subject to payment of the California Department of Fish and Game fee.

**SECTION TWO:** The City Council makes the following findings with respect to the adoption of the Los Portales Specific Plan:

1. The Los Portales Specific Plan meets all provisions of Article 8, Chapter 3 of Division I of Title 7 of the California Planning and Zoning Law (Government Code Sections 65450 through 65457).
2. The Los Portales Specific Plan is consistent with the General Plan in that adoption of the Los Portales Specific Plan will establish a zoning overlay district where specific development standards are established to regulate the development of below-market rate housing.
3. With respect to Section 1507 of the City Charter, build-out of the Los Portales Specific Plan would result in significant and unavoidable cumulative traffic impacts and guest parking impacts. The City Council has balanced the benefits of the project against the unavoidable traffic and parking impacts and has concluded that the benefits of the project outweigh the significant traffic and parking impacts sufficiently to make the adverse effects acceptable.

Short-term impacts on air quality due to construction would be significant, but mitigable with the application of standard dust control measures. Long-term air quality impacts due to the land development would be less than significant. Impacts to biological resources would be reduced to a less than significant level with the installation of replacement skyline trees. Impacts related to ground shaking and other seismic hazards would be reduced to a less than significant level with the implementation of the recommendations in the Geotechnical Engineering Report. Interior noise impacts to specified units would be reduced to a less than significant level with the implementation of the requirement that forced air circulation must be provided for these units. Significant short- and long-term water quality impacts would be reduced to a less than significant level with the implementation of erosion control measures, compliance with standard City requirements, and the use of storm drain surface pollutant interceptor.

The benefits of the project include the provision of below-market-rate housing for employees of businesses located on the South Coast of Santa Barbara County, with special emphasis on the employees of local non-profit organizations that provide important social and cultural services to the region.

4. The Specific Plan is consistent with the policies of the General Plan as follows:
  - a. Land Use Element Policies 4.1 and 4.2 will be met because the Specific Plan provides for residential development, the highest priority for development in the City, and for consideration of residential development in the M-1 zone.
  - b. Circulation Element Policy 7.4 will be met because the Specific Plan provides for tandem parking onsite as well as off-site parking for the guest parking spaces.
  - c. Circulation Element Policy 13.1 will be met because the Specific Plan area is located near employment opportunities and other urban services.

- d. Housing Element Policies 4.1 and 4.3 will be met because the Specific Plan will provide affordable residential units on an in-fill site.
- e. Housing Element Policy 5.2 will be met because the Specific Plan will allow tandem parking spaces and a reduction in the number of guest parking spaces for an affordable housing project.
- f. Housing Element Policy 6.3 will be met because the Specific Plan will provide housing opportunities for households that would not qualify for other housing programs intended to assist those with incomes below median income levels, and would provide housing designated for employees of businesses on the South Coast, with special emphasis on the staff of non-profit organizations that provide important services to the South Coast region.
- g. Noise Element Policy 3.0 will be met because the type of development allowed by the Specific Plan area is consistent and compatible with surrounding development and mitigation measures will be implemented so that the interior noise level of all units are below the City threshold.
- h. Seismic Safety-Safety Element goals will be met because the development allowed by the Specific Plan will include mitigation measures to reduce potential geologic and flood-related hazards.

**SECTION THREE:** The Zoning Map of the Santa Barbara Municipal Code is amended by establishing a Specific Plan (SP-10) zoning overlay on a property located at 535 E. Montecito Street (APN 031-351-010).

**SECTION FOUR:** The “Los Portales Specific Plan”, known as the “SP-10 Zone” is adopted to read as follows:

## **LOS PORTALES SPECIFIC PLAN**

### **1. Legislative Intent.**

It is the purpose of the Los Portales Specific Plan (SP-10) to establish a price-restricted multiple-family housing overlay zone on a property currently zoned M-1, Light Manufacturing (Santa Barbara Municipal Code Chapter 28.72). Although new residential development is generally prohibited in the M-1 Zone, it is the intent of this Special Plan to allow a residential development of forty-eight (48) condominium units within the Specific Plan area that provides a level of affordability equal to or greater than the terms specified in this Plan.

### **2. Uses Permitted.**

The following uses are permitted in the Special Plan Area:

- A. Any use permitted in the M-1 Zone (Santa Barbara Municipal Code Chapter 28.72), subject to the restrictions and limitations contained in Chapter 28.72.

- B. Attached multiple-family dwellings subject to the following conditions:
1. Any residential use proposed within the Specific Plan Area shall be subject to the price, occupancy, and employment restrictions specified in Section 11 of this Specific Plan, and
  2. Any condominium development shall comply with Municipal Code Title 27, Subdivisions; however, Santa Barbara Municipal Code Section 27.13.040, which prohibits residential condominium development in the M-1 zone, shall not apply in this Specific Plan area, and
  3. The residential project shall substantially conform to the plans approved by the Planning Commission and signed by the Commission Chair dated August 21, 2008, as determined by the Community Development Director.

**3. Building Height.**

Regardless of use, no building shall exceed four (4) stories or a building height of sixty (60) feet.

**4. Front and Interior Setback Requirements.**

No front or interior setbacks are required for projects that provide a residential component that satisfies the price, occupancy, and employment restrictions specified in Section 11 of this Specific Plan. All other projects shall observe the setback requirements of the M-1 Zone (Santa Barbara Municipal Code Chapter 28.72).

**5. Distance Between Buildings on the Same Lot.**

No separation between buildings is required; except, all main buildings used exclusively for residential purposes shall be no closer than ten feet (10') to any other main building on the same lot.

**6. Maximum Number of Dwelling Units Allowed.**

No residential project developed pursuant to this Specific Plan shall exceed forty-eight (48) residential units.

**7. Outdoor Living Space.**

Outdoor living space for any residential development shall be provided pursuant to the provisions applicable to the R-3 Zone (Santa Barbara Municipal Code Chapter 28.21).

**8. Parking.**

Parking shall be provided as required in Santa Barbara Municipal Code Chapter 28.90; however, the following exceptions to those requirements shall be allowed for

projects that provide a residential component that satisfies the price, occupancy, and employment restrictions specified in Section 11 of this Specific Plan:

A. **TANDEM PARKING.** The required parking for residential units may be provided in a tandem configuration.

B. **OFF-SITE GUEST PARKING.** Required off-street guest parking spaces for a residential use may be provided on the same lot as the use served, or on another lot, subject to the same terms and conditions on which commercial off-site parking is allowed pursuant to Santa Barbara Municipal Code Section 28.90.001.R.

## **9. Architectural Control.**

Any development within the SP-10 Zone shall be subject to the review and approval of the Architectural Board of Review.

## **10. Exemption from SBMC Chapter 28.43.**

Development within the SP-10 Zone is exempt from the Inclusionary Housing requirements of SBMC Chapter 28.43 – the “City of Santa Barbara Inclusionary Housing Ordinance.”

## **11. Price Restricted Housing Provision.**

A. **GENERAL REQUIREMENT.** The residential project approved pursuant to this Specific Plan 10 shall contain forty-eight (48) residential units of which at least forty (40) units shall be constructed and offered for sale as Below-Market Price Units restricted for owner-occupancy and subject to the requirements specified in this Section 11.

B. **REQUIREMENTS FOR BELOW-MARKET PRICE UNITS.** Below-Market Price Units are subject to the following requirements:

1. **Initial Sale Price.** The average (mean) initial sale price of all Below-Market Price Units in the residential development shall not exceed \$565,000. In addition, the initial sale price of any individual Below-Market Price Unit shall not exceed \$645,000. The maximum sale prices specified in the preceding two sentences shall increase by 2.5%, compounded annually, from the effective date of the ordinance adopting this Specific Plan 10 until the close of escrow on the first sale of a Below-Market Price Unit to an owner-occupant or a period not to exceed five (5) years from the effective date of the ordinance adopting this Specific Plan 10, whichever occurs first. The average initial sale price and the maximum sale price shall be adjusted monthly on a pro-rata basis and rounded to the nearest one hundred dollars (\$100) (i.e., each month the average initial sale price and the maximum initial sale price shall be increased by 1/12 of the annual increase calculated for the year and the resulting amount shall be rounded to the nearest \$100).

2. **Resale Price.** Following the initial sale of a Below-Market Price Unit to an owner-occupant, the resale price of the Below-Market Price Unit may increase by no more than 2.5%, compounded annually, measured from the date of sale to the then current owner. The maximum resale price shall be adjusted monthly on a

pro-rata basis (i.e., each month the maximum resale price shall be increased by 1/12 of the annual increase calculated for the year) and rounded to the nearest one hundred dollars (\$100). Other adjustments to the resale price may be made in accordance with the City's Affordable Housing Policies and Procedures Manual.

3. Owners of Below-Market Price Units must occupy their unit as their principal residence, as that term is defined for federal tax purposes by the United States Internal Revenue Code.

4. Owner Employment Requirement. At the time of purchase, at least one owner of each Below-Market Price Unit shall be employed on the South Coast of Santa Barbara County, with a preference given to persons who are employed at a location within the City of Santa Barbara.

5. Duration of Restrictions. Below-Market Price Units constructed in accordance with this Specific Plan 10 must be legally restricted as to price, occupancy, and employment as specified in this Section 11 in conformance with the City's Affordable Housing Policies and Procedures Manual and as approved by the City Attorney.

6. Unrestricted Units. Units that are not designated as Below-Market Price Units may be sold without occupancy or employment restrictions.

C. CONSTRUCTION STANDARDS FOR BELOW-MARKET PRICE UNITS. Below-Market Price Units built under this Specific Plan must conform to the following standards:

1. Design. Below-Market Price Units must be dispersed throughout the Residential Development and must be comparable in construction quality and exterior design to the Market-Rate Units constructed as part of the Development. Below-Market Price Units may be smaller in aggregate size and may have different interior finishes and features than Market-Rate Units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing as determined appropriate by the Community Development Director.

2. Size and Bathroom Count. The minimum unit size of each Below-Market Price Unit shall be in conformance with the City's Affordable Housing Policies and Procedures. Absent a waiver from the Community Development Director, two-bedroom Below-Market Price Units shall have at least one and one-half bathrooms, and three-bedroom Below-Market Price Units shall have at least two bathrooms. However, the required number of bathrooms per Below-Market Price Unit need not be greater than the average number of bathrooms per unit in the Market-Rate Units.

3. Timing of Construction. All Below-Market Price Units must be constructed and made available for purchase concurrently with or prior to the construction and availability for purchase of Market-Rate Units of the Development. In phased developments, Below-Market Price Units may be constructed and made available for purchase in proportion to the number of units in each phase of the Residential Development.

## **12. Below-Market Price Unit Plan Processing.**

A. GENERALLY. The submittal to the City of a Below-Market Price Unit Plan and recordation of an approved City affordability control covenant shall be a pre-

condition on the City Council approval of any Final Subdivision Map, and no building permit shall be issued for any residential development to which this Specific Plan applies without full compliance with the provisions of this Section 12.

B. **BELOW-MARKET PRICE UNIT PLAN.** A Below-Market Price Unit Plan shall be submitted to and approved by the Community Development Director as being complete prior to the issuance of a building permit for the residential project. The Community Development Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determine the consistency of the Project's proposed Below-Market Price Unit Plan or construction standards with the requirements of this Specific Plan.

C. **REQUIRED PLAN ELEMENTS.** A Below-Market Price Unit Plan must include the following elements or submittal requirements:

1. The number, location, and size of the proposed Unrestricted Units and Below-Market Price Units.

2. A floor or site plan depicting the location of the Below-Market Price Units and the Unrestricted Units.

3. The design standards and typical construction materials to be used to improve the interior of a Below-Market Price Unit.

4. The methods to be used to advertise the availability of the Below-Market Price Units and select the eligible purchasers, including preference to be given, if any, to applicants who live or work within the City of Santa Barbara in conformance with the City's Affordable Housing Policies and Procedures.

5. For phased development, a phasing plan that provides for the timely development of the number of Below-Market Price Units proportionate to each proposed phase of development.

D. **PRICE, OCCUPANCY, AND EMPLOYMENT CONTROL COVENANTS.** Prior to issuance of a grading permit or building permit, whichever is requested first, a standard City control covenant must be approved and executed by the Community Development Director, executed by the Applicant/Owners, and recorded against the title of each Below-Market Price Unit. If subdivision into individual condominium units has not been finalized at the time of issuance of a grading permit or building permit, an overall interim control covenant shall be recorded against the development, and shall be replaced by a separate recorded control covenant upon the sale of each Below-Market Price Unit.

### **13. Eligibility for Below-Market Price Units.**

A. **GENERAL ELIGIBILITY FOR BELOW-MARKET PRICE UNITS.** No Household may purchase or occupy a Below-Market Price Unit unless the City has approved the Household's eligibility, and the Household and City have executed and recorded a control covenant in the official records of the County of Santa Barbara with respect to the Below-Market Price Unit. (Such control covenant is in addition to the overall interim control covenant required of the Applicant/Owner in Subsection 12.D of this Specific Plan) The eligibility of the purchasing household shall be established in accordance with the City's Affordable Housing Policies and Procedures and any additional eligibility requirements agreed upon in writing by the Applicant and the City.

However, under this Specific Plan there are no maximum household income restrictions for buyers of the Below-Market Price Units.

B. **OWNER OCCUPANCY.** A Household which purchases a Below-Market Price Unit must occupy that unit as a principal residence, as that term is defined for federal tax purposes by the United States Internal Revenue Code.

C. **OWNER EMPLOYMENT REQUIREMENT.** At the time of purchase, at least one owner of each Below-Market Price Unit shall be employed on the South Coast of Santa Barbara County, with a preference for persons employed within the City of Santa Barbara.

#### **14. Renewal of Controls Covenant.**

A renewal of the controls covenant will be entered into upon each change of ownership of a Below-Market Price Unit and upon any transfer or conveyance (whether voluntarily or by operation of law) of an owner-occupied Below-Market Price Unit as such covenants are required in accordance with the City's Affordable Housing Policies and Procedures and this Specific Plan.

#### **15. Area Map.**

The map attached hereto as Exhibit A and labeled "Specific Plan Area 10" is hereby approved and incorporated in this Specific Plan by this reference.

#### **16. Phasing of Multi-family Residential Project.**

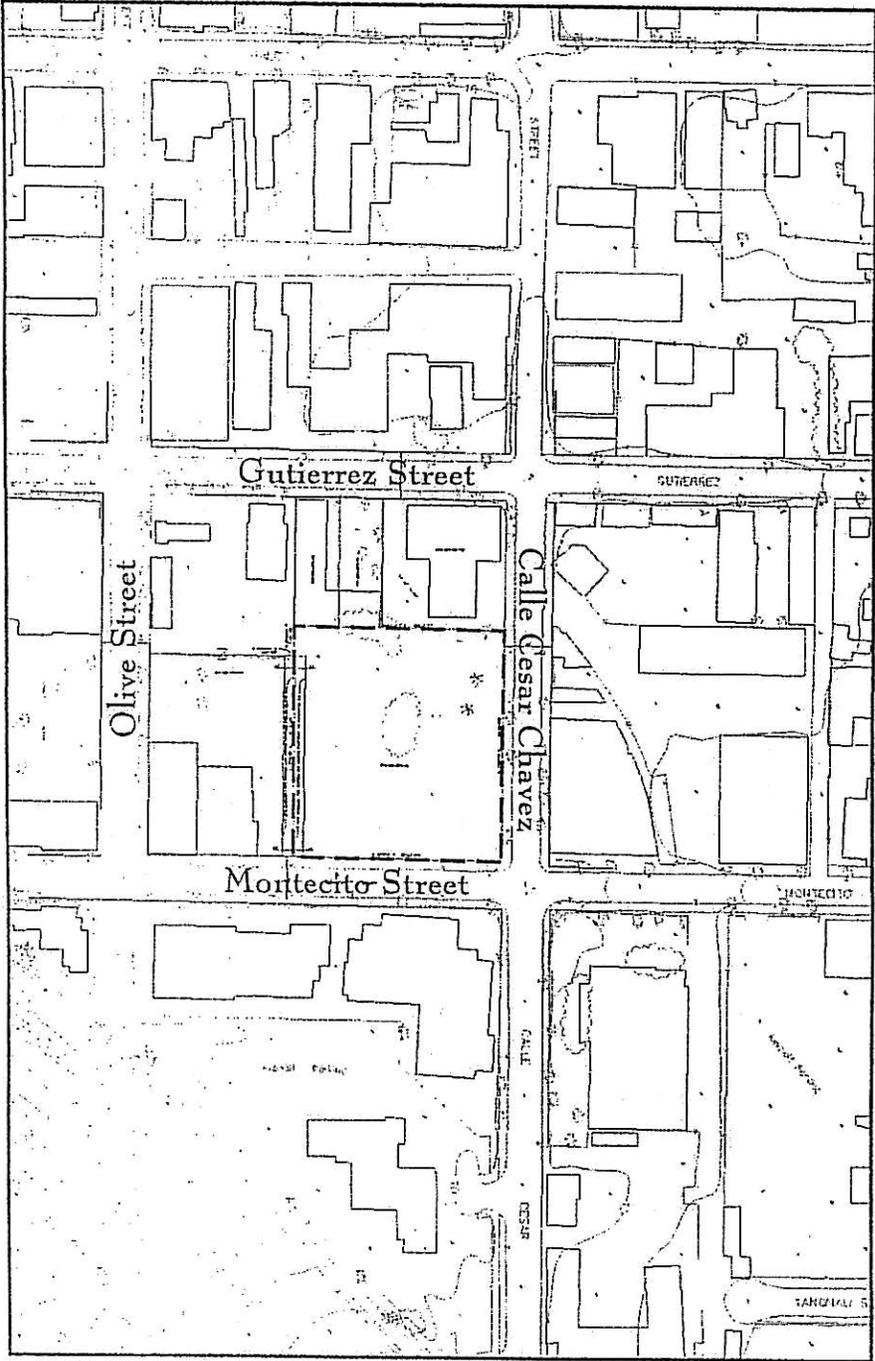
The multi-family residential project approved by Section 2(B) of this Specific Plan may, at the discretion of the property owner, be constructed and occupied in distinct phases provided that each phase shall consist of not less than eight (8) units and provided that all common area utilities and amenities are constructed with the issuance of a certificate of occupancy for the first phase of the development, as determined appropriate by the Community Development Director and the City Engineer.

#### **17. Expiration of Specific Plan upon Failure to Obtain a Building Permit.**

If a building permit for the first phase of the residential development anticipated by this Specific Plan 10 is not obtained within seven (7) years of the effective date of the Ordinance adopting this Specific Plan 10, and construction is not begun within 180 days of obtaining the permit, this Specific Plan 10 shall expire.

**SECTION FIVE:** The Bermant Development Company shall execute an agreement, in a form acceptable to the City Attorney, accepting the requirements of this Specific Plan and agreeing to abide by the terms and conditions of the Los Portales Specific Plan and to fully defend and indemnify the City with respect to any litigation concerning the City's approval of the Specific Plan, which agreement shall be executed by Bermant Development Company prior to the effective date of this Ordinance.

Exhibit A: Map of Specific Plan Area 10



SPECIFIC PLAN AREA 10