

(R-96-186)

RESOLUTION NUMBER R-286127

ADOPTED ON JULY 18, 1995

WHEREAS, on June 8, 1995, the Planning Commission of the City of San Diego ("City") recommended denial of Planned Residential Development, Resource Protection Ordinance ("RPO"), Hillside Review Overlay Permit, and Rezone No. 93-0140 which proposed 253 single-family residential lots located east of Interstate 805 and south of Interstate 905 ("Project"), described as a portion of the Northwest Quarter, Section 36, Township 18 South, Range 2 West, and a portion of Lots 1 and 2, Section 31, Township 18 South, Range 1 West, San Bernardino Base and Meridian in the A1-10 Zone; and

WHEREAS, on July 18, 1995, the City Council of The City of San Diego considered a request by BRUCE TABB, ENVIRONMENTAL DEVELOPMENT, LTD., a California Corporation, Owner/Permittee, pursuant to Sections 101.0900 and 101.0462 of the Municipal Code of The City of San Diego for Planned Residential Development, RPO, Hillside Review, and Rezone No. 93-0140; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Permit No. 93-0140:

**PLANNED RESIDENTIAL PERMIT FINDINGS:**

- A. THE PROPOSED USE WILL FULFILL AN INDIVIDUAL AND/OR COMMUNITY NEED AND WILL NOT ADVERSELY AFFECT THE GENERAL PLAN OR THE COMMUNITY PLAN.

The Project will achieve the applicant's objectives for the Project site. The Project will also fulfill the need for new, single-family neighborhoods in the community. The community's need and desire for this type of housing, which designates the site for residential development at densities of 0-5 units per acre. The project complies with these density limitations; the Otay Mesa Community Plan ("Community Plan") would allow 412 dwelling units and the Project includes construction of 253 units. The Project will not adversely affect the Progress guide and general Plan of the city ("General Plan") or Community Plan. The Project includes a rezone application to maintain consistency between the Community Plan land use designations, the zoning, and the Project. The Final Environmental Impact report ("EIR") for the Project demonstrates that the Project will not adversely affect the existing neighborhood or adjacent land uses.

- B. THE PROPOSED USE, BECAUSE OF CONDITIONS THAT HAVE BEEN APPLIED TO IT, WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY, AND GENERAL WELFARE OF PERSONS RESIDING OR WORKING IN THE AREA AND WILL NOT ADVERSELY AFFECT OTHER PROPERTY IN THE VICINITY.

Approval of the Project would not be detrimental to the health, safety and general welfare of persons residing in the Project or working in the area as mitigation measures to address noise, seismic safety, erosion and traffic have been addressed in the permit conditions.

- C. THE PROPOSED USE WILL COMPLY WITH THE RELEVANT REGULATIONS IN THE MUNICIPAL CODE.

The project complies with all relevant regulations in the San Diego Municipal Code, including without limitation the zoning ordinance relevant to the proposed R1-5000 zone in conjunction with the Planned Residential development Ordinance, RPO, and the Subdivision Map Ordinance.

**RESOURCE PROTECTION ORDINANCE ALTERNATIVE COMPLIANCE FINDINGS:**

Pursuant to RPO, San Diego Municipal Code section 101.0462, so long as the city finds the Project complies with RPO to the maximum extent feasible, then: (1) the city shall grant alternative compliance to prevent unnecessary hardship to the applicant, (2) the City may grant alternative compliance to preclude a conflict between the application of RPO and an adopted

City Council policy, the General Plan, or any adopted community plan; and/or (3) on making findings of overriding social and economic considerations in addition to the findings enumerated in section 101.0462(L)(2), the City may grant alternative compliance to ensure the provision of extraordinary benefit to the general public.

Application of the strict encroachment allowances of RPO would prevent the issuance of a RPO permit for the Project. The project site and off site improvement area contains 12.2 acres of slopes in excess of 25% and approximately 17.5 acres of biologically sensitive lands as defined by RPO. Based on the percentage of the property containing steep slopes and biologically-sensitive lands, the allowable encroachments into these resources would be 0.87 acres of encroachment into biologically sensitive lands and 0.57 acres of encroachment onto steep slopes.

Development of the Project, exclusive of the Otay Mesa Road improvements and off-site sewer line improvements, will result in only 0.60 acres of on-site encroachment into biologically-sensitive lands (related to brush management) and 4.55 acres of on-site encroachment onto steep slopes).

The majority of the encroachment into biologically sensitive lands, as identified in the EIR, will occur as a result of the improvements to Otay Mesa Road, which are required to bring the road up to Community Plan standards and which would occur with or without the implementation of the Project. Consequently, the City finds that alternative compliance would be appropriate for the Project.

Although any of the three sets of the alternative compliance findings is sufficient basis for approval of the RPO Permit, the City finds the alternative compliance is justified in this case to prevent unnecessary hardship to the applicant and to ensure the provision of extraordinary public benefit.

**A. STRICT APPLICATION OF THE RPO WOULD RESULT IN UNNECESSARY HARDSHIP TO THE APPLICANT.**

1. **There are special circumstances or conditions applying to the project site that are peculiar to the subject property and are not of the applicant's making whereby the strict application of the RPO would deprive the property owner of the reasonable use of the land.**

There are multiple special circumstances applying to the Project site as a result of topographical and access constraints. The strict application of RPO encroachment allowances would deprive the property owner of any reasonable use of the land.

Encroachments into biologically-sensitive lands along the southern perimeter of the subject property will occur as a result of (1) providing access to the Project site and (2) improving Otay Mesa Road to Community Plan standards.

Access to the site can be provided only from Otay Mesa road. to provide access to the developable portions of the site, it is necessary to cross a band of biologically-sensitive lands which runs the length of Otay Mesa Road. The project proposes two connections to Otay Mesa Road to avoid public safety and circulation concerns which would be associated with a single access.

Additionally, the excess encroachments related to streets are primarily caused by the improvement of Otay Mesa Road to Community Plan standards as part of the Project. Otay Mesa Road serves as the primary gateway to the Otay Mesa Community. The improvements to Otay Mesa Road are essential to the development of the Community Plan area. Without these improvements, it will be impossible to provide adequate circulation to the community. In fact, the Community Plan demonstrates that the improvement of Otay Mesa Road should occur in the first phases of development of the Community Plan area.

The City recognizes that the impacts related to these improvements are not attributed solely to the Project; encroachments for these improvements would be necessary with or without the Project Minimum design standards established by the City and the roadway designation of the Community Plan preclude redesigning the roadway to avoid encroachments into the resources protected by RPO. Therefore, the Project's encroachments are a necessary and unavoidable result of the improvements, which are required b the Otay Mesa Community Plan.

The Project's encroachments onto steep slopes is necessary to provide adequate internal circulation within the Project site. The steep slopes are located in the north-central portion of the site. Avoiding development of these slopes would limit access to the unconstrained eastern portion of the site to one long cul-de-sac. Pursuant to the general Plan designations, it appears that approximately 80-100 residential units may be constructed in the unconstrained eastern portion of the Project (i.e., the portion which is not steep slopes of biologically-sensitive lands).

based on the conditions of the site it would be unacceptable to limit access to these residential units to one cul-de-sac access road.

The steep slopes which must be graded over to provide access to the developable, eastern portion of the site are isolated slopes which are not contiguous with any on-site or off-site slopes or biologically-sensitive lands. The affected slopes are aesthetically insignificant. At most they may be glimpsed briefly from vehicles traveling along SR-905. Additionally, the slopes have been previously disturbed as a result of the construction of SR-905 to the north; the viewshed reflects the disturbances and grading which has already occurred.

For these reasons, the City has determined that strict application of the RPO encroachment allowances to the Project would cause unnecessary hardship to the applicant and would deprive the property owner the reasonable use of the property.

2. **There are no feasible measures that can further minimize potential adverse effects on environmentally sensitive lands.**

The Project preserves in natural open space all of the sensitive lands which feasibly could be preserved. The applicant has agreed to implement all reasonable mitigation measures identified in the EIR for the Project.

The Community Plan designates only 1.9 acres of the site as open space. The proposed Project includes 29.3 acres of natural open space slopes on-site.

Approximately 10.2 acres of biologically-sensitive lands and steep slopes in the eastern portion of the which will be preserved in natural open space; the natural open space which will be preserved on-site is designed to provide a continuation of proposed adjacent open space areas in order to provide for a contiguous, community-wide open space system. Additionally, the Project will preserve the biologically-sensitive lands along Otay Mesa Road to the extent feasible, although grading will be necessary to provide adequate access to the site.

The on-site habitats are of lower potential value for long-term conservation due to the following:

- The subject property is comprised of approximately 1.6% undisturbed MSS and 2.4% undisturbed DCSS. Of the total area of natural habitats within a one-mile radius, undisturbed MSS comprises approximately 14.5% and undisturbed DCSS comprises approximately 9.8%. Therefore, the on-site habitats do not represent the most dense habitat within the region.
- The nearest area of higher value habitat is located approximately one mile from the subject property; therefore, the on-site habitats are not situated close to lands of higher potential value.
- The subject property is located at the west edge of the Community Plan area, with freeways and major roads surrounding the site on three sides. Urban development occurs to the west, across I-805. The subject site is isolated from native habitat areas to the north and south due to SR-905 and Otay Mesa Road, respectively. These barriers prevent wildlife dispersal across the west, north and south property boundaries. As such, the project site essentially forms a natural vegetation and wildlife "cul-de-sac". Although it is within a suggested "core" reserve area as identified by the MSCP, the site does not serve as a critical wildlife corridor linkage between higher value habitat areas.
- The on-site habitats support only two pairs of coastal California gnatcatchers and one pair of cactus wrens. These are not significant populations as defined by the Southern California Coastal Sage Scrub Scientific Review Panel ("SRP"), which considers five or more pairs of either species to be a significant population.

Additionally, the applicant proposes to offset the excessive encroachment into biologically-sensitive lands by undertaking off-site acquisition of equally suitable habitat. The applicant will acquire or fund the acquisition of 17.6 acres of maritime succulent scrub (6.4 acres) and Diegan sage scrub (11.2 acres). The specific acreages reflect 2:1 compensation ratios due to the presence of California gnatcatchers and cactus wrens within the habitats to be impacted. Implementation of this program would facilitate

regional preserve design goals as set forth by the California Department of Fish and Game's Natural Communities Conservation Program ("NCCP") and the City's Multiple Species Conservation Plan. Combined with the overriding factors discussed below, the regional biological benefits of the proposed project would more than offset the loss of on-site MSS and DCSS habitats. The off-site acquisition area will be required to meet the following criteria:

- Be of equal or better quality as the on-site habitat to be impacted;
- Be part of a large, interconnected block of preserved native habitat;
- Exhibit an ability to support a high density and richness of species of concern;
- Serve to provide a representative sample of the diversity of the area;
- Provide wildlife corridors and habitat linkages;
- Exhibit the capability to add to the vegetative diversity of the preserve system;
- Minimize the amount of "edge effect" and influence from development disturbances; and
- Be located as close as feasible to the impacted site.

No mitigation measures are identified in RPO to compensate for encroachment into steep slopes. Consequently, no Project mitigation measures are available to reduce impacts related to excess encroachments onto steep slopes. In any case, to the extent that mitigation was feasible, as a result of the nature of the affected slopes, which are isolated slope remnants, have been previously disturbed, and are not aesthetically significant, mitigation in proportion to the impacts would be minimal and de minimus benefit to the goals of RPO.

Redesigning the Project to avoid the excess encroachments is infeasible. Although it would be possible to cluster the development in the western portion of the site by developing attached residential units rather than single-family homes, thereby avoiding encroachments into steep slope areas, this would be infeasible. This alternative

design would not implement the Project applicant's objectives, would not achieve the community's goals for single-family homes, and would not be economically feasible since the market price for attached units would not bear the infrastructure and development costs. Reducing the total number of single-family homes on-site might also reduce the encroachment areas; however, this alternative should be infeasible because the infrastructure and development costs could not be borne by a substantially reduced number of homes.

Either of these alternatives would also substantially reduce the development fees generated by the Project which would substantially impair the City's ability to implement the Public Facilities Financing Plan for Otay Mesa. The infeasibility of these two alternatives is discussed in the EIR and in the CEQA Findings which are incorporated by reference herein.

The applicant could reduce encroachments into the sensitive lands which border Otay Mesa Road by eliminating the access roads; however, this would render the property unusable since these roads provide the only access to the site. Elimination of one of the access roads would reduce the encroachments (although it would not eliminate the encroachments); this is infeasible because of the public safety, design and circulation problems which would be associated with the provision of a single access to the site. Finally, the encroachments could be reduced by the use of bridges rather than culvert crossings; this would only slightly reduce the impacted area since grading would still be necessary to buttress the bridges and shadow effects would still occur. Additionally, bridges are economically infeasible; bridges would cost nearly ten times as much as the proposed culvert crossings. The market prices for homes in the area would not bear the additional cost of nearly \$8,000 per dwelling unit.

3. **Alternative compliance for the development will not adversely affect the Progress Guide and general Plan for the City of San Diego.**

The proposed Project complies with the General Plan and the Community Plan. Alternative compliance is necessary in order to improve Otay Mesa Road or general Plan/Community Plan standards.

4. **The proposed development will conform to the adopted Community Plan for the area and any other applicable plans, policies and ordinances.**



The proposed Project conforms to the Otay Mesa Community Plan. The Project conforms to all other applicable plans, policies and ordinances. Alternative compliance is necessary in order to improve Otay Mesa Road to General Plan/Community Plan standards pursuant to the City's design standards and to provide adequate access to and internal circulation within the Project site.

**B. STRICT APPLICATION OF THE RPO WOULD PRECLUDE PROVISIONS OF EXTRAORDINARY BENEFIT TO THE GENERAL PUBLIC.**

**A. THERE ARE NO FEASIBLE MEASURES THAT FURTHER MINIMIZE THE POTENTIAL ADVERSE EFFECTS ON ENVIRONMENTALLY SENSITIVE LANDS WHILE STILL PROVIDING THE EXTRAORDINARY BENEFIT.**

As previously discussed in the A.2 finding above, which is herein incorporated by reference, the applicant has incorporated all feasible mitigation measures; there are no feasible measures to minimize the encroachments into sensitive lands, as defined by RPO.

The extraordinary benefits to the general public provided by this project are described herein and in the Statement of Overriding Considerations for the Remington Hills Project.

- The Project will provide balanced and affordable housing for a variety of age groups, family sizes, and economic, racial and ethnic compositions consistent with Council Policy 600-20.
- The Project will provide new, reasonable-priced, single-family housing, which is in high demand by the community; multiple-family housing would not serve the needs of the community.
- The Project will provide approximately \$1.3 million in development fees pursuant to the Otay Mesa Public facilities Financing Plan as well as increased property taxes.
- The project will provide jobs in the construction industry, which are desperately needed in the current economic condition.
- The project will provide twice the acreage of biological habitat affected by development; the habitat will be of high quality and importance.
- The project will implement long-range land use plans for the area consistent with the air quality goal of providing housing in closer proximity to employment centers.

These benefits cannot be achieved if the Project is unable to obtain a RPO Permit as a result of the strict application of the RPO encroachment limitations to this Project.

**B. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT THE CITY OF SAN DIEGO'S PROGRESS GUIDE AND GENERAL PLAN.**

The proposed project complies with the General Plan and the Community Plan. Alternative compliance is necessary in order to improve Otay Mesa Road to General Plan/Community Plan standards.

**C. THE PROPOSED DEVELOPMENT CONFORMS TO THE ADOPTED COMMUNITY PLAN FOR THE AREA AND ANY OTHER APPLICABLE PLANS, POLICIES, AND ORDINANCES.**

The proposed Project conforms to the Community Plan. The Project conforms to all other applicable plans, policies and ordinances. Alternative compliance is necessary in order to improve Otay Mesa Road to General Plan/Community Plan standards pursuant to the City's design standards and to provide adequate access to and internal circulation within the Project site.

**HILLSIDE REVIEW FINDINGS:**

**A. THE SITE IS PHYSICALLY SUITABLE FOR THE DESIGN AND SITING OF THE PROPOSED STRUCTURE AND WILL RESULT IN THE MINIMUM DISTURBANCE OF SENSITIVE AREAS.**

The project site is characterized by natural rolling hills, steep slopes and environmentally sensitive lands. The project proposes to grade over 78 percent of the site, exceed the permitted encroachment allowance into the steep slopes and sensitive lands and develop manufactured slopes which will be an average of 35 feet in height. This results in both an incompatible site design and excessive disturbance of sensitive areas. However, the City Council has determined that the need for housing in this area outweighs the requirement of the extreme encroachment into Hillside Review.

**B. THE GRADING AND EXCAVATION PROPOSED IN CONNECTION WITH THE DEVELOPMENT WILL NOT RESULT IN SOIL EROSION, SILTING OF LOWER SLOPES, SLIDE DAMAGE, FLOODING, SEVERE SCARRING OR ANY OTHER GEOLOGICAL INSTABILITY WHICH WOULD AFFECT HEALTH, SAFETY AND GENERAL WELFARE AS APPROVED BY THE CITY ENGINEER DISTURBED SLOPES ARE PLANTED WITH NATIVE AND SELF-SUFFICIENT VEGETATION.**

Mitigation measures have been required as a condition of the tentative Map (93-0140) to ensure that grading and excavation will not affect the health, safety or

welfare of the public. Conditions have been included in the permit to require the developer to re-vegetate the disturbed slopes would be planted with natural ground covers, irrigated and maintained.

- C. **THE PROPOSED DEVELOPMENT RETAINS THE VISUAL QUALITY OF THE SITE, THE AESTHETIC QUALITIES OF THE AREA AND THE NEIGHBORHOOD CHARACTERISTICS BY UTILIZING PROPER STRUCTURAL SCALE AND CHARACTER, VARIED ARCHITECTURAL TREATMENTS, AND APPROPRIATE PLANT MATERIAL.**

This project proposes approximately 727,000 cubic yards of balanced cut and fill over 78 percent of the project site, would result in significant landform alteration additionally, manufactured slopes would average 35 feet in height.

However, the project proposes to maintain the visual quality of the site.

- D. **THE PROPOSED DEVELOPMENT IS IN CONFORMANCE WITH THE OPEN SPACE ELEMENT OF THE GENERAL PLAN, THE OPEN SPACE AND SENSITIVE LAND ELEMENT OF THE COMMUNITY PLAN, OTHER ADOPTED APPLICABLE PLANS, AND THE ZONE. THE APPLICANT HAS DISCUSSED THE FEASIBILITY OF OPEN SPACE DEDICATIONS OR EASEMENTS WITH APPROPRIATE CITY STAFF.**

Though the applicant does propose to dedicate a 9.59-acre open space parcel to the City and 22.74 acres would be retained in open space as part of the project's brush management requirements. The proposed development is in conformance with the Open Space Element of the General Plan nor the Otay Mesa Community Plan which stipulate that "... development should be permitted in conformance with the HR Zone, and" ... and hillside grading shall be done in a sensitive manner pursuant to the hillside review ordinance" (SIC). Additionally, the project does not use the PRD regulations to cluster development and reduce impacts to steep slopes and sensitive lands on the site.

- E. **THE PROPOSED DEVELOPMENT IS IN CONFORMANCE WITH THE QUALITATIVE GUIDELINES AND CRITERIA AS SET FORTH IN DOCUMENT NO. RR-262129, "HILLSIDES DESIGN AND DEVELOPMENT GUIDELINES."**

The proposed development is in conformance with the qualitative guidelines and criteria set forth in the Hillside Design and Development Guidelines. The intent of the Hillside Review Ordinance is to protect the natural and topographic character and identity of these areas. Additionally, the project is being clustered in such a way as to protect or reduce the impacts to the existing natural terrain or the sensitive slopes and habitats.

**BRUSH MANAGEMENT FINDINGS:**

- A. THE PROPOSED BRUSH MANAGEMENT PROGRAM, TO THE EXTENT FEASIBLE, WILL NOT ADVERSELY AFFECT FLOODPLAINS, BIOLOGICALLY SENSITIVE LANDS, HILLSIDES SIGNIFICANT PREHISTORIC SITES AND RESOURCES AND WETLANDS AS DEFINED IN THE RESOURCE PROTECTION ORDINANCE, SAN DIEGO MUNICIPAL CODE SECTION 101.0462.

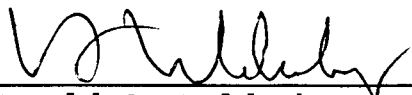
Environmental Impact Report DEP No. 93-0140 concluded the project will have a significant environmental effect. However, impacts to biologically sensitive lands resulting from implementation of the brush management program will be mitigated. Additional impacts to sensitive vegetation, not considered by the Environmental Impact Report DEP NO. 93-0140, will not occur by the proposed brush management program. The impacts which have considered in the EIR represent the minimum necessary while still providing the necessary fire protection to persons and property as required by the Uniform Fire Code Appendix IIA. Implementation of the proposed brush management program will be inspected to assure compliance with the approved drawings and to assure additional impacts to sensitive areas do not occur.

- B. THE PROPOSED BRUSH MANAGEMENT PROGRAM, TO THE EXTENT FEASIBLE, WILL MINIMIZE THE ALTERATIONS OF VEGETATION AND WILL NOT RESULT IN UNDUE RISKS FROM EROSIONAL FORCES.

The proposed brush management program will alter vegetation for purposes of fire protection, yet will not result in undue risks from erosional forces. The proposed brush management program will utilize an effective fire break by creating the minimum twenty-five-foot Zone 1, the use of architectural features outlines in Section 6.6-2 of the *Landscape Technical Manual*, and selective thinning of existing vegetation within zones two and three. Alterations to existing vegetation will be limited and minimized. No disruption to the soil surface will result from the implementation of the brush management program, existing vegetation will not be trimmed lower than six inches above the ground surface and will not be thinned beyond the required percentages of zones two and three.

BE IT FURTHER RESOLVED, that, based on the findings hereinbefore adopted by the City Council, Planned Residential Development Permit, Resource Protection Ordinance Permit, and Hillside Review Overlay Permit No. 93-0140 is hereby granted to Owner/Permittee under the terms and conditions set forth in Permit No. 93-0140, a copy of which is attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By   
\_\_\_\_\_  
Harold O. Valderhaug  
Chief Deputy City Attorney

HOV:ps  
09/06/95  
Or.Dept:Clerk  
PRD 93-0140  
R-96-186  
Form=r-t