

RESOLUTION NUMBER R-287444

ADOPTED ON MAY 28, 1996

WHEREAS, MCMILLIN DEVELOPMENT, a California corporation, Owner/Permittee, filed an application to develop a Planned Commercial Development, SCRIPPS RANCH VILLAGES, described as all of Lots 1 through 5, and Lots "A," "B," & "D" of Scripps Ranch North Unit No. 2 according to Map No. 12788 filed February 28, 1991, located in Miramar Ranch North in the CA Zone; and

WHEREAS, on May 28, 1996, the Planning Commission of the City of San Diego considered Planned Commercial Development Permit No. 95-0565 pursuant to Section 101.0910 of the Municipal Code of The City of San Diego; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Planned Commercial Development Permit No. 95-0565:

- 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 proposed project is consistent with the General Plan of the City of San Diego and the Miramar Ranch North Community Plan. Currently there are no opportunities within the Miramar Ranch North community for residents of the community to acquire needed retail goods and products. This project would fulfill a need within the community for a retail neighborhood shopping center to serve the residents. The conditions of approval required for this proposed project will protect the community from any adverse affects resulting from the implementation and continued operation of the project.

- 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.**

The Planned Commercial Development Permit contains conditions which will protect the general public against adverse affects from the implementation of the proposed project. The permitted uses listed within the permit are consistent with the CA zone of the Municipal Code. The proposed project would conform with the development standards and regulations of the Municipal Code to assure that there will be no adverse affects to health, safety and general welfare of persons and property in the vicinity.

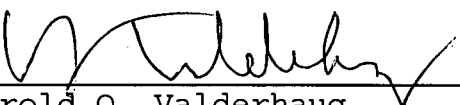
**c. The proposed use will comply with the relevant regulations in the Municipal Code.**

The proposed project will comply with all the relevant regulations in the Municipal Code which are applicable for this development. Conformance with the Municipal Code is required for the proposed design of the retail neighborhood shopping center and the continued operation of the center at all times. The proposed project has been thoroughly reviewed and determined to comply with the regulations of the Municipal Code. Continued conformance will be further assured by the conditions of approval included in the Planned Commercial Development Permit.

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

BE IT FURTHER RESOLVED, that, based on the findings hereinbefore adopted by the City Council, Planned Commercial Development Permit No. 95-0565, is hereby granted to Owner/Permittee in the form and with the terms and conditions set forth in Planned Commercial Development Permit No. 95-0565, a copy of which is attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By   
Harold O. Valderhaug  
Head Deputy City Attorney

HOV:ps  
06/19/96  
Or.Dept:Clerk  
R-96-1605  
Reviewed by John Fisher

RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES DEPARTMENT

AND WHEN RECORDED MAIL TO  
PERMIT INTAKE  
MAIL STATION 501

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SPACE ABOVE THIS LINE FOR RECORDER'S USE  
PLANNED COMMERCIAL DEVELOPMENT PERMIT NO. 95-0565  
CITY COUNCIL  
SCRIPPS RANCH VILLAGES

This Planned Commercial Development Permit is granted by the City Council of the City of San Diego to McMillin Development, a California Corporation, Owner/Permittee, pursuant to Section 101.0910 of the Municipal Code of the City of San Diego.

1. Permission is granted to Owner/Permittee, to construct a Planned Commercial Development neighborhood retail shopping center located at the southwest corner of Scripps Poway Parkway and Spring Canyon Road, described as Lots 1-5 and Lots "A", "B", & "D" of Scripps Ranch North Unit No. 2 per Map No. 12788, in the CA Zone.
2. The facility shall consist of the following:
  - a. 25.1 acres of commercial development constructed in two phases; phase one consisting of approximately 135,805 square feet of commercial retail space and phase two consisting of approximately 47,900 square feet of commercial retail space distributed throughout a total of fifteen buildings;
  - b. Improvements in the public right-of-way;
  - c. Off-street parking at the rate of one (1) parking space per 200 gross square feet of commercial retail use per each phase;
  - d. Landscaping within the public right-of-way and within the private property;
  - e. Pedestrian improvements within the property as detailed on the plans; such as benches, special paving materials, overhead trellises, gazebos, water fountains and features, special lighting standards, accent tiles, accent lighting and fixtures; and
  - f. The plaza area between buildings ten and eleven shall include tables, chairs and shade structures such as umbrellas all to be maintained by the Owner/Permittee or Lessee/Tenant.

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g. Accessory uses as may be determined incidental and approved by the Development Services Department Manager.

3. No permit for grading or building of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Owner/Permittee signs and returns the permit to the Development Services Department;
- b. The Planned Commercial Development Permit is recorded in the office of the County Recorder.

4. The Planned Commercial Development Permit shall comply with the conditions of the final map for Vesting Tentative Map No. 95-0565.

5. Only the uses allowed in the CA zone shall be permitted to operate on the property. Permission to operate uses not listed in the CA zone requires an amendment to this Planned Commercial Development Permit or as allowed through a determination of substantial conformance consistent with the rules, regulations and procedures as outlined in the Municipal Code.

6. No 24-hour commercial operations shall be conducted on parcels identified on Vesting Tentative Map No. 95-0565 as parcels 8, 7, 6 or 5, except an automated teller machine.

7. No fewer than 710 off-street parking spaces shall be provided in phase one and no fewer than 195 off-street parking spaces shall be provided in phase two or at the minimum rate of 1 space per 200 square feet of floor area and shall be maintained on the property in the approximate location shown on Exhibit "A," dated May 28, 1996, on file in the office of the Development Services Department. Parking spaces shall be consistent with Chapter X, Article 1, Division 8, section 101.0800 of the San Diego Municipal Code and shall be permanently maintained and not converted for any other use. Parking spaces and aisles shall conform to Development Services Department standards. Parking areas shall be marked.

8. Prior to the issuance of any building permits, a final subdivision map consistent with Vesting Tentative Map No. 95-0565 shall be recorded on the subject property.

9. Prior to the issuance of any building permits, the Owner/Permittee shall comply with all recommendations and requirements as identified in the August 26, 1994 Traffic Study for the original permit, PCD 94-0333 unless determined to be replaced by additional requirements enumerated within this permit or by condition of the Vesting Tentative Map No. 95-0565. All

recommendations and requirements shall be installed and/or approved for in a manner satisfactory to the City Engineer.

10. Prior to the issuance of any building permits, the Owner/Permittee shall indicate on the construction drawings provisions to accommodate two proposed bus stop/shelters by maintaining a ten foot wide sidewalk measured from the back of the curb extending for twenty-five feet parallel to the curb on Scripps Poway Parkway approximately 200 feet west of the intersection of Spring Canyon Road and the second bus stop/shelter shall be located on the northwest corner of Scripps Poway Parkway and Spring Canyon Road. In both cases the ten foot sidewalk shall be free of any barriers such as, but not limited to, landscaping or any other barrier.

11. Prior to the issuance any building permits, the Owner/Permittee shall assure, by permit and bond, the installation of a traffic signal at Spring Canyon Road and North Brookville Drive and shall provide an interconnect with it and the traffic signal at Scripps Poway Parkway and Spring Canyon Road, in a manner satisfactory to the City Engineer.

12. Prior to the issuance of any building permits, complete grading and building plans shall be submitted to the Development Services Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated May 28, 1996, on file in the office of the Development Services Department. No change, modifications or alterations shall be made unless appropriate applications, Findings of Substantial Conformance or amendment of this permit shall have been granted.

13. Prior to the issuance of any grading or building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Development Services Manager for approval. The plans shall be in substantial conformity to Exhibit "A," dated May 28, 1996, on file in the office of the Development Services Department. All trees planted within paved pedestrian areas shall include the installation of tree grates set flush with the surrounding pavement or a raised six inch concrete curb. Approved planting shall be installed before issuance of any occupancy permit on any building. Such planting shall not be modified or altered unless this permit has been amended and is to be maintained in a disease, weed and litter free condition at all times.

14. Prior to the issuance of any building permits, the building plans for the gazebo structure shall indicate electrical wiring to provide electrical outlets and lighting fixtures. The building plans shall also indicate necessary plumbing for at least two hose-bibs to provide water or some other permanent method for the provision of water and a community bulletin board or kiosk.

15. Prior to the issuance of any building permits, the applicant shall:

- a. Ensure that building address numbers are visible and legible from the street in conformance with the Uniform Fire Code Section 10.208.
- b. Show the location of the fire hydrant(s) nearest this property on the plot or site plan in conformance with the Uniform Fire Code Section 10.301.
- c. Provide access in conformance with Fire Department Policy A-89-1 in accordance with Uniform Fire Code Section 10.207.

16. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the Development Services Department, Land Development Review Division for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and a point by point plot to include all areas within the private property and to extend a minimum of fifty (50) feet beyond the property line, construction details as necessary to direct installation of the outdoor lighting system, manufacturers name, fixture model name and number; including all necessary shields, visors, prisms, lenses and reflectors and a lighting plan locating each fixture in plan view and a legend. The outdoor lighting system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.

Prior to the issuance of any occupancy permit, a night inspection shall be required to verify compliance of the outdoor lighting system. No light shall be directed to fall outside the property line. Light levels along the perimeter of the property shall be measured no higher than two footcandles. Light levels throughout the planned commercial development shall be the least practical level necessary to effectively illuminate the operation. Sky glow or light halo shall be reduced to the greatest extent practical and in no case shall initial light levels be measured exceeding seventeen footcandles anywhere within the site. The Owner/Permittee, or an authorized representative, shall provide an illuminance meter to measure light levels as required to establish conformance with the conditions of this permit during the night inspection. Night inspections may require additional fees as determined by the Development Services Manager.

17. Whenever proposed landscaping is adjacent to existing landscaping maintained by a landscape maintenance district, the required landscaping plans for this area of the project shall be subject to the approval by the Park and Recreation Department, Open Space and Park Development Divisions.

18. Development of this site shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 92-08-DWQ (NPDES General Permit No. CAS000002), *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity*. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be developed and implemented concurrently with the commencement of grading activities, and a complete and accurate acknowledgement from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received.

19. The drainage system proposed for this development, as shown on the approved Vesting Tentative Map and Site Plan, is subject to approval by the City Engineer.

20. The Penasquitos Trunk Sewer is approaching its ultimate capacity. If any wastewater from this development flows into the Penasquitos Trunk Sewer, then connections may be limited. A moratorium on connections shall be imposed in the event of the trunk sewer becoming a hazard to the public health and safety.

21. Providing water and sewer for this development is dependent upon the prior construction of certain water and sewer mains in previously approved development in this area. If they have not been constructed when required for this development then the construction of certain portions of these previously approved water and sewer mains, as required by the City Engineer, will become off-site improvement requirements for this development.

22. No encroachments into Lot "7" of Map No. 12788, which is City-owned in fee title open space, shall be permitted without a right-of-entry permit and an encroachment removal agreement. Construction of the retaining wall adjacent to parcels 9 through 13 and the 2:1 slope adjacent to parcel 14 as shown on the Vesting Tentative Map requires the right-of-entry permit and/or an encroachment removal agreement.

23. The permit must be utilized within 36 months after the effective date. Failure to utilize the permit within 36 months will automatically void the permit unless an extension of time has been granted by the Development Services Manager, as set forth in Section 111.1122, of the Municipal Code. Any such extension of time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the Development Services Manager.

24. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.

25. After establishment of the project, the property shall not be used for any other purposes unless an amendment to this Planned Commercial Development Permit is approved or as allowed through a determination of substantial conformance consistent with the rules, regulations and procedures as outlined in the Municipal Code or:

- a. The proposed use meets every requirement of the zone existing for the property at the time of conversion; and
- b. This permit has been revoked by the City.

26. This Planned Commercial Development Permit may be canceled or revoked if there is any material breach or default in any of the conditions of this permit. Cancellation or revocation may be instituted by the City of San Diego or Permittee.

27. This Planned Commercial Development Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.

28. Permanent and/or temporary signs shall be approved by the Development Services Manager and shall be consistent with the criteria established by the sign plan, part of Exhibit "A," dated May 28, 1996.

29. This Planned Commercial Development may be developed in phases. Each phase shall be constructed prior to the sale or lease to individual owners or tenants to ensure that all development is consistent with conditions and exhibits submitted to and approved by the Development Services Manager.

30. The use of textured or enhanced paving shall be permitted only with the approval of the City Engineer and Development Services Manager, and shall meet standards of these departments as to location, noise and friction values, and any other applicable criteria.

31. If any existing hardscape or landscape indicated on the approved plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind per the approved plans.

32. Street trees, decorative pavements and other public right-of-way improvements shown on Exhibit "A," dated May 28, 1996, require an Encroachment Permit obtained from the City Engineer.

33. The permittee/applicant shall comply with all requirements of the Uniform Building Code (UBC) and secure all necessary building permits prior to construction.



34. The Owner/Permittee shall provide a copy of this Planned Commercial Development Permit 95-0565 to all prospective tenants prior to occupancy of the premises.

35. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the permit is obtaining as a result of this permit. It is the intent of the City that the Owner of the property which is the subject of this permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this permit, but only if the Owner complies with all the conditions of this permit.

In the event that any condition of this permit, on a legal challenge by the Owner/Permittee of this permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this permit shall be void. However, in such event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition back to the discretionary body which approved the permit for a determination by that body as to whether all the findings necessary for the issuance of the permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed permit and the condition(s) contained therein.

36. Owner/Permittee shall take affirmative actions, including placing restrictions in tenant leases as necessary, to preclude tenants from generating adverse noise or other operational impacts to the residential neighbors south of this Planned Commercial Development. Regarding those uses that have no restricted hours of operation as stated in the permit, following occupancy of the first building for a period of three years, the Owner/Permittee shall monitor the activities allowed by this permit to determine if any adverse noise or other operational impacts are occurring within the residential areas south of this Planned Commercial Development. The Owner/Permittee shall submit a report at the end of the first six months to the City Manager which details the results of the monitoring including the specifics of complaint(s), the location of the source of the complaint(s), the time and date of each occurrence and the location of the affected property. The Development Services Manager shall determine, after reviewing the report with the Neighborhood Code Compliance Division of Community and Neighborhood Services, if additional restrictions within the permit are warranted. If additional restrictions are warranted,

an amendment to the permit shall be required to address the complaint(s) and shall be considered by the appropriate decision maker so designated in the Municipal Code.

The issuance of this permit by the City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.).

The following are included as information only:

- a. This development may be subject to a building permit park fee in accordance with San Diego Municipal Code Section 96.0401 et seq.
- b. This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.
- c. The City and Owner/Permittee previously have provided for the construction and financing of major public facilities through the existing Miramar Ranch North Public Facilities Financing Plan ("Financing Plan"). The Financing Plan provides primarily for the construction of "turn key facilities." Community Facilities District No. 1 (Miramar Ranch North) has been established as a funding mechanism to finance many of these facilities. Furthermore, the City and Owner/Permittee have entered into associated agreements including, without limitation, the Settlement Agreement dated September 18, 1990 (and amended April 29, 1991) and Development Agreement effective February 21, 1991, which describe the respective rights and obligations of the City and the Owner/Permittee.

To the extent the provisions and conditions of this Permit may be inconsistent with and legally control the provisions and conditions of the Settlement Agreement dated September 18, 1990 between McMillin-BCED/Miramar Ranch North and the City of San Diego (and amended April 28, 1991) and Development Agreement between McMillin-BCED/Miramar Ranch North and the City of San Diego effective February 21, 1991, the provisions and conditions of this permit shall govern.

APPROVED by the City Council of the City of San Diego on May 28, 1996, by Resolution No. R-287444.

**AUTHENTICATED BY THE CITY MANAGER**

By \_\_\_\_\_

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The undersigned Permittee, by execution hereof, agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

**McMillin Development**  
a California corporation  
Owner/Permittee

By \_\_\_\_\_

By \_\_\_\_\_

**NOTE: Notary acknowledgments  
must be attached per Civil  
Code Section 1180, et seq.  
06/19/96**