

RESOLUTION NUMBER R-288754

ADOPTED ON JUNE 3, 1997

WHEREAS, John Castle of the San Diego Museum of Contemporary Art appealed the decision of the Planning Commission in denying Coastal Development Permit/La Jolla Planned District/Special Use Permit (CDP/LJC/SUP) No. 96-0257 submitted by the San Diego Museum of Contemporary Art, Owner/Permittee, to amend CDP/LJC/SUP No. 90-0747 and to further develop subject property located at 700 Prospect Street, and described as Lots 1 through 10, 13, 14, and a Portion of 15, Block 35, La Jolla Park, Map No. 352, in the La Jolla Community Plan area, in Zone 6A of the La Jolla Planned District; and

WHEREAS, the matter was set for public hearing on June 3, 1997, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to CDP/LJC/SUP No. 96-0257, amending CDP/LJC/SUP No. 90-0747:

COASTAL DEVELOPMENT PERMIT FINDINGS (SAN DIEGO MUNICIPAL CODE ("SDMC") SECTION 105.0208):

- A. **THE PROPOSED DEVELOPMENT WILL NOT ENCROACH UPON ANY EXISTING PHYSICAL ACCESSWAY LEGALLY UTILIZED BY THE PUBLIC OR ANY PROPOSED PUBLIC ACCESSWAY IDENTIFIED IN AN ADOPTED LCP LAND USE PLAN; NOR WILL IT OBSTRUCT VIEWS TO AND ALONG THE OCEAN AND OTHER SCENIC COASTAL AREAS FROM PUBLIC VANTAGE POINTS.**

There are no existing physical accessways legally utilized by the public nor are there proposed public accessways identified in the adopted LCP Land Use Plan on or adjacent to the subject property. The proposed development will not obstruct views to or along the ocean or other scenic coastal areas in the vicinity from public vantage points.

B. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT MARINE RESOURCES, ENVIRONMENTALLY SENSITIVE AREAS, OR ARCHAEOLOGICAL OR PALEONTOLOGICAL RESOURCES.

There are no marine resources, environmentally sensitive areas, or archaeological or paleontological resources on the subject property. An environmental exemption has been granted pursuant to CEQA Guidelines.

C. THE PROPOSED DEVELOPMENT WILL COMPLY WITH THE REQUIREMENTS RELATED TO BIOLOGICALLY SENSITIVE LANDS AND SIGNIFICANT PREHISTORIC AND HISTORIC RESOURCES AS SET FORTH IN THE RESOURCE PROTECTION ORDINANCE, CHAPTER X, SECTION 101.0462 OF THE SAN DIEGO MUNICIPAL CODE, UNLESS BY THE TERMS OF THE RESOURCE PROTECTION ORDINANCE, IT IS EXEMPTED THEREFROM.

Pursuant to the terms of the Resource Protection Ordinance, this project, located in the Coastal Zone, is exempt from SDMC section 101.0462.

D. THE PROPOSED DEVELOPMENT WILL NOT ADVERSELY AFFECT RECREATIONAL OR VISITOR-SERVING FACILITIES OR COASTAL SCENIC RESOURCES.

This facility is a recreational, visitor-serving facility and coastal scenic resource. However, the site will not be adversely affected by the proposed fence modifications on the subject property.

E. THE PROPOSED DEVELOPMENT WILL BE SITED AND DESIGNED TO PREVENT ADVERSE IMPACTS TO ENVIRONMENTALLY SENSITIVE HABITATS AND SCENIC RESOURCES LOCATED IN ADJACENT PARKS AND RECREATION AREAS, AND WILL PROVIDE ADEQUATE BUFFER AREAS TO PROTECT SUCH RESOURCES.

There are no parks or recreation areas adjacent to the subject property, nor are there environmentally sensitive habitats or scenic resources which would be adversely affected by the requested modifications to a fence location and locking of a security gate.

F. THE PROPOSED DEVELOPMENT WILL MINIMIZE THE ALTERATIONS OF NATURAL LANDFORMS AND WILL NOT RESULT IN UNDUE RISKS FROM

GEOLOGIC AND EROSIONAL FORCES AND/OR FLOOD AND FIRE HAZARDS.

No undue risks from geologic or erosional forces and/or flood or fire hazards are anticipated. This amendment proposes only the modification of two previously approved permit conditions. These conditions relate to the proposed relocation and operation of an existing 6'-0" high open fence.

G. THE PROPOSED DEVELOPMENT WILL BE VISUALLY COMPATIBLE WITH THE CHARACTER OF SURROUNDING AREAS, AND WHERE FEASIBLE, WILL RESTORE AND ENHANCE VISUAL QUALITY IN VISUALLY DEGRADED AREAS.

The relocation and operation of the existing fence should not adversely affect the character of surrounding areas. The open design, together with existing landscaping will contribute to the visual quality of the area.

H. THE PROPOSED DEVELOPMENT WILL CONFORM WITH THE GENERAL PLAN, THE LOCAL COASTAL PROGRAM, AND ANY OTHER APPLICABLE ADOPTED PLANS AND PROGRAMS.

The proposed modifications are consistent with the purpose and intent of the La Jolla Planned District Ordinance as well as the designation and previous development of this property for cultural use. A fence variance is being granted to allow the relocated fence to observe a reduced setback of 3'-6" where 15'-0" is required.

LA JOLLA PLANNED DISTRICT PERMIT FINDINGS (SDMC SECTION 103.1204(F)):

A. THE PROJECT IS CONSISTENT WITH THE PURPOSE AND INTENT OF THE LA JOLLA PLANNED DISTRICT, IT IMPLEMENTS THE GOALS AND OBJECTIVES OF THE ADOPTED LA JOLLA COMMUNITY PLAN, THE LA JOLLA - LA JOLLA SHORES COASTAL PROGRAM AND THE PROGRESS GUIDE AND GENERAL PLAN OF THE CITY OF SAN DIEGO.

The property has been developed with an existing cultural use in a manner that retains and enhances the economic, historical, architectural, educational, civic, social, cultural, and aesthetic values, and the overall quality of life in the community. The requested modifications are not anticipated to have an adverse effect on these goals, nor upon public health, safety or general welfare of the community. The property will retain its high land use priority, and the proposed fence/design standards will maintain the area's unique architectural appearance and scale.

B. THE PROJECT IS CONSISTENT WITH THE PROPERTY AND BUILDING DEVELOPMENT REGULATIONS OF THE LA JOLLA PLANNED DISTRICT ZONE 6A AND APPLICABLE CITY-WIDE ZONING ORDINANCES.

A variance is being granted to allow the existing six-foot-high open fence currently observing a 15' -0" front yard setback, to be relocated to observe a minimum 3' -6" front setback from Coast Boulevard. The variance findings stated below support deviations from the Planned District Regulations and applicable zoning ordinances.

C. THE PROJECT IS CONSISTENT WITH ALL OF THE STANDARDS OF THE LA JOLLA PLANNED DISTRICT ORDINANCE.

Refer to the variance findings stated below.

VARIANCE FINDINGS (SDMC SECTION 101.0502(D)):

A. THERE ARE SPECIAL CIRCUMSTANCES OR CONDITIONS APPLYING TO THE LAND OR BUILDINGS FOR WHICH THE ADJUSTMENT IS SOUGHT, WHICH CIRCUMSTANCES OR CONDITIONS ARE PECULIAR TO SUCH LAND OR BUILDINGS IN THE NEIGHBORHOOD. SUCH CONDITIONS SHALL NOT HAVE RESULTED FROM ANY ACT OF THE APPLICANT SUBSEQUENT TO THE ADOPTION OF THE APPLICABLE ZONING ORDINANCE.

The buildings developed on the property which serve the long - established cultural use, observe increased setbacks from Coast Boulevard. A large open yard/garden area exists, in addition to mature landscaping adjacent to Coast Boulevard. The property slopes downward to the west, from the buildings to the public right-of-way adjacent to Coast Boulevard. The fence placement, with a 3' -0" front yard setback where 15' -0" is required and with a 6' -0" height where 3' - 0" is the maximum permitted within the setback, will not adversely affect pedestrian movement due to the topography of the area and the existing 3' -0" high retaining wall along the easterly edge of the existing sidewalk. These conditions have not resulted from any act of the applicant subsequent to the adoption of the applicable Zoning Ordinance.

B. THE AFORESAID CIRCUMSTANCES OR CONDITIONS ARE SUCH THAT THE STRICT APPLICATION OF THE PROVISIONS OF THE ORDINANCE WOULD DEPRIVE THE APPLICANT OF THE REASONABLE USE OF THE LAND OR BUILDINGS AND THAT THE VARIANCE GRANTED BY THE CITY IS THE MINIMUM VARIANCE THAT WILL ACCOMPLISH THIS PURPOSE.

The placement of the existing fence observing a 15' -0" setback is depriving the applicant of reasonable use of the property. A portion of the existing slope is unusable to the Museum for purposes of additional exhibits and continuation of the established cultural use. The relocation of the fence will provide additional area for provision of exhibits, thereby enhancing the opportunities for cultural uses on the property, and is consistent with the established use. An increased setback would conflict with existing mature landscaping on the property.

C. THE GRANTING OF THE VARIANCE WILL BE IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ZONING REGULATIONS AND WILL NOT BE INJURIOUS TO THE NEIGHBORHOOD OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE.

The property is located in Subarea 6A of the La Jolla Planned District. As such, certain deviations from the zoning regulations were anticipated (reference SDMC section 103.1203(B)(32)). These deviations are being granted pursuant to approved variance findings. The proposed modifications will not adversely impact, but will preserve the existing open visual access corridor as intended by SDMC section 103.1206(F).

D. THE GRANTING OF THE VARIANCE WILL NOT ADVERSELY AFFECT THE PROGRESS GUIDE AND GENERAL PLAN FOR THE CITY OF SAN DIEGO OR THE ADOPTED COMMUNITY PLAN FOR THE AREA.

The variance being granted will allow for the sensitive siting and relocation of an existing open fence. The relocated fence will be architecturally compatible with the main buildings on the premises, and constructed of wrought iron as intended by SDMC section 103.1206(B)(7). Therefore the granting of the variance is not anticipated to have an adverse affect on the aforementioned plans and policy documents.

VARIANCE TO SPECIAL USE PERMIT FINDINGS (SDMC SECTION 103.1208(A)):

A. THE PROJECT IS CONSISTENT WITH THE PURPOSE AND INTENT OF SDMC SECTION 103.1201.

The project will retain and enhance the economic, historical, architectural, educational, civic, social, cultural and aesthetic values as intended by SDMC section 103.1201. The project is not anticipated to have a negative impact on the overall quality of life within the La Jolla Community.

The subject property is located in Zone 6 of the La Jolla Planned District, identified as a cultural zone. The regulations are intended to preserve and enhance existing cultural uses. The standards in subarea 6A are intended to protect and enhance public ocean views.

The location of a six-foot-high open fence within the front yard setback will have no impact on ocean views from identified public vantage points, nor from within the public right-of-way. The relocation of an open fence will enhance the Museum's identified existing cultural use as a cultural institution as specified in SDMC section 103.1203(B)(11), by expanding the available secure area in which to exhibit works of art. The expanded area for its intended use will also enhance the preservation and maintenance of the identified cultural use in this cultural zone as intended by SDMC section 103.1201(I), and as a cultural complex as indicated in the La Jolla Community Plan.

This ability is consistent with the goals and objectives of the adopted La Jolla Community Plan, the La Jolla - La Jolla Shores Local Coastal Program Addendum and the Progress Guide and General Plan of the City of San Diego.

B. THE PROJECT IS CONSISTENT WITH SDMC SECTIONS 103.1205, 103.1206 AND 103.1207.

The findings specified in SDMC section 101.0502(D) have been made, consistent with the purpose and intent of the La Jolla Planned District Ordinance as it pertains to the furtherance and enhancement of identified cultural resources within the La Jolla Community. Unique circumstances exist and have been previously discussed to justify a permissible height deviation to SDMC section 103.1206(B)(7).

C. THE PROJECT IS CONSISTENT WITH THE STANDARDS IDENTIFIED IN THIS SECTION.

The proposed fence complies with the general criteria and standards of SDMC section 103.1206(B)(7) with the exception of height.

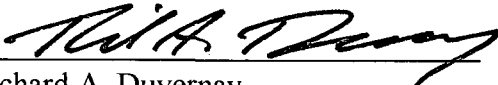
Unique circumstances have been identified which justify the requested height deviation for the fence. These circumstances include the topography of the site, identified cultural use of the property, open character of the proposed fence to enable views from and to the exhibits on Museum property, and the availability of the expanded secure area to enhance the identified cultural use of the Museum to serve the community.

The requested change in location of the fence is being made in conjunction with the approval for Museum expansion, acquired with CDP/LJC/SUP No. 90-0747, which is being amended with the approval of CDP/LJC/SUP Amendment No. 96-0257.

BE IT FURTHER RESOLVED, that the appeal of John Castle of the Museum of Contemporary Art is granted; the decision of the Planning Commission is overturned, and CDP/LJC/SUP No. 96-0257, amending CDP/LJC/SUP No. 90-0747, is hereby granted to the San

Diego Museum of Contemporary Art, pursuant to the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

RAD:lc
06/20/97
09/24/97 Permit Corrected
Or.Dept:Clerk
R-97-1450
Form=permitr.frm

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES

AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CITY COUNCIL
COASTAL DEVELOPMENT/LA JOLLA PLANNED DISTRICT/SPECIAL USE
PERMIT NO. 96-0257
SAN DIEGO MUSEUM OF CONTEMPORARY ART
AMENDMENT TO COASTAL DEVELOPMENT/LA JOLLA PLANNED DISTRICT/
SPECIAL USE PERMIT NO. 90-0747

This Coastal Development/La Jolla Planned District/Special Use Permit Amendment No. 96-0257 is granted by the Council of The City of San Diego to THE SAN DIEGO MUSEUM OF CONTEMPORARY ART, a California Not-For-Profit Corporation, Owner/Permittee, pursuant to San Diego Municipal Code sections 105.0202, 103.1201 and 103.1208.

1. Permission is hereby granted to Owner/Permittee to amend Coastal Development/La Jolla Planned District/Special Use Permit No. 90-0747 for property located at 700 Prospect Street, described as Lots 1 through 10, 13, 14 and a Portion of 15, Block 35, La Jolla Park, Map No. 352, within Zone 6A of the La Jolla Planned District.

2. The facility shall consist of the following:

- a. Renovate the existing museum, add 7,555 square feet of useable space and a security fence (six-foot-high, wrought iron fence, setback 3'-6" from property line on Coast Boulevard);
- b. Landscaping;
- c. Off-street parking; and
- d. Incidental accessory uses as may be determined incidental and approved by the City Manager.

3. The Permittee shall mount a plaque where it can be readily viewed by garden passersby along the Coast Blvd. South side of the property honoring the memory of Ellen Browning Scripps, and explaining the significance of the garden as the site of her

original garden. The Museum will consult with the La Jolla Historical Society on the design of the plaque.

4. The fence is to be of the design and material already exhibited to the City Council and installed elsewhere on the Museum grounds, or otherwise be of an attractive and tasteful design consistent with the "open fencing" requirements of the Municipal Code which would allow public viewing of the garden from outside the fence.

5. The Permittee shall allow free, public access to the sculpture garden during all hours when the Museum is open to the public, provided that the admission of such patrons be through the main entrance of the Museum. Should an appeal to the California Coastal Commission or a civil action be filed in opposition to the granting of this permit, the Permittee's acceptance of this permit condition is predicated on the entire permit, as approved by the City Council on June 3, 1997, by Resolution No. R-288754, being unchanged either by future actions by the California Coastal Commission or by a court. Further the Trustees agree to put up a sign near the gate in the sculpture garden wall along Coast Boulevard South informing the public of the free, public access policy and directing people to the main entrance. This sign shall be installed concurrently with the relocation of the fence.

a. This condition regarding free, public access may be reviewed five (5) years from the approval date of this permit at the Museum's request. Should the Permittee desire to amend or eliminate the free, public access condition, the burden to adequately demonstrate the need to amend or eliminate this condition will fall to the Museum Trustees.

6. Not fewer than 24 off-street parking spaces shall be maintained on the property in the location shown on Exhibit "A," dated February 27, 1992, on file in the office of Development Services. Parking spaces shall comply with Chapter X, Article 1, Division 8 of the Zoning Regulations of the Municipal Code and shall be permanently maintained and not converted for any other use. Parking space dimensions shall conform to Zoning Ordinance standards. Parking areas shall be clearly marked at all times. Landscaping located in any parking area shall be permanently maintained and not converted for any other use.

7. No permit shall be granted nor shall any activity authorized by this permit be conducted on the premises until:

a. The Permittee signs and returns the permit to Development Services; and

b. The Coastal Development/La Jolla Planned District/Special Use Permit Amendment is recorded in the office of the County Recorder.

8. Before issuance of any building permits, complete grading and working drawings shall be submitted to Development Services for approval. Plans shall be in substantial conformance to Exhibit "A," dated February 27, 1992, on file in the office of Development Services. No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

9. Before issuance of any grading or building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to Development Services for approval. The plans shall be in substantial conformity to Exhibit "A," dated June 3, 1997, on file in the office of the Development Services. 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.

10. The property included within this coastal development shall be used only for the purposes and under the terms and conditions set forth in this permit unless authorized by the City Manager or the permit has been revoked by the City of San Diego.

11. This Coastal Development/La Jolla Planned District/Special Use Permit Amendment may be canceled or revoked if there is a 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.

12. This Coastal Development/La Jolla Planned District/Special Use Permit Amendment 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 in this permit and all referenced documents.

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

14. To the extent this conditions is consistent with state and local laws, this project shall comply with the standards, policies and requirements in effect at the time of approval of this project, including any successor or new policies, financing, mechanisms, phasing schedules, plans and ordinances relating to growth management adopted by the City of San Diego after

January 11, 1990. The Owner/Permittee may challenge the legality of the imposition of future requirements pursuant to this conditions at the time such future requirements and their impacts on the project are defined.

15. 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.

16. The north end of the proposed cafe shall recess five feet southward to preserve the existing public view corridor toward the ocean.

17. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the installation of pedestrian ramps on Prospect Street opposite from the corners of Silverado Street and at Draper Street and at the corner of Coast Boulevard and Coast Boulevard South, adjacent to this site, in a manner satisfactory to the City Engineer.

18. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the removal of the drainage grate and high curb along the frontage on Prospect Street at the intersection with Draper Street, in a manner satisfactory to the City Engineer.

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

- a. Ensure that building address numbers are visible and legible from the street (UFC 10.208).
- b. Show the location of all fire hydrants on the plot plan (UFC 10.301).
- c. Post indicator valves, Fire Department connections, and alarm bell are to be located on the address/access side of the structure (UFC 10.301).

20. Unless appealed this Coastal Development/La Jolla Planned District Special Use Permit Amendment shall become effective on the eleventh working day following receipt by the Coastal Commission of the Notice of Final Action.

21. This Coastal Development Permit/La Jolla Planned District Permit/Special Use Permit Amendment No. 96-0257 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 as set forth in Section 111.1122 of the Municipal Code.

22. This Coastal Development Permit Amendment incorporates La Jolla Planned District and Special Use Permits. The La Jolla Planned District/Special Use Permit Amendment shall not be valid until the Coastal Development Permit Amendment becomes effective.

23. 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 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 of 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.

APPROVED by the Council of The City of San Diego on June 3, 1997, by Resolution No. R-288754.

AUTHENTICATED BY THE CITY MANAGER

By _____

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.

**SAN DIEGO MUSEUM OF
CONTEMPORARY ART**

Owner/Permittee

By _____

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

06/20/97

09/24/97 COR.COPY

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