

(R-98-1577)

RESOLUTION NUMBER R-290168

ADOPTED ON MAY 26, 1998

WHEREAS, Jerry L. Elder, an individual, and Hannon Enterprises, Inc., a California corporation, Owners, and Hallmark Communities, Inc., a California corporation, Permittee, filed an application with The City of San Diego to rescind Planned Commercial Development [PCD] Permit No. 88-0497 and to approve Planned Residential Development [PRD] Permit No. 96-7622 for the development a 20-lot single-family subdivision on property located on the north side of Carmel Mountain Road and the west side of Entreken Way, and described as Lot 1, Black Mountain Vista North Unit No. 4, Map 12603, in the Rancho Peñasquitos Community Plan area, in the CN (proposed R1-5000) zone; and

WHEREAS, on April 2, 1998, the Planning Commission of The City of San Diego considered the rescission of PCD Permit No. 88-0497 and the adoption of PRD Permit No. 96-7622; and

WHEREAS, pursuant to Resolution No. 2621-3-PC, the Planning Commission voted to recommend that the City Council rescind PCD Permit No. 88-0497 and adopt of PRD Permit No. 96-7622; and

WHEREAS, the matter was set for public hearing on May 26, 1998, 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 the recommendation of Planning Commission to rescind PCD Permit No. 88-0497 is sustained and that this Council rescinds PCD Permit No. 88-0497.

BE IT FURTHER RESOLVED, that the Council adopts the following findings with respect to PRD Permit No. 96-7622:

**1. The proposed use will fulfill an individual and/or community need and will not adversely affect the General Plan or the Community Plan.**

This project site was originally a part of Planned Residential Development Permit No. 84-0497 approved by the Council of The City of San Diego on January 27, 1987. The property was rezoned from the previous agricultural zone to residential zone R1-5000. While the PRD and accompanying subdivisions developed, an amendment was processed for this 2.94 acre site to rescind the PRD and approve Planned Commercial Development Permit No. 88-0497 in order to provide neighborhood serving commercial uses. The PCD was approved in 1989. This site was preliminarily graded and all work subsequently abandoned, leaving the site fenced-off for safety reasons. The owner/applicant is requesting that the site now be utilized for single-family residential uses under the PRD permit process as was originally proposed. This use provides for individual and community needs in the form of residential housing within an area developed with housing. Since the initial PCD was applied for in 1989, the main commercial Towne Center and other commercial areas have been built out in this community. The owner/applicant, City staff and the community planning group no longer see the need for additional commercial uses on the subject site.

**2. 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 subject Planned Residential Development Permit and Rezoning Permit are being processed concurrently with a Rancho Peñasquitos Community Plan Amendment and a Tentative Subdivision Map. The Planned Residential Development Permit has conditions to assure orderly development with the proposed R1-5000 residential zone requirements and the development has been reviewed for compatibility with the previously developed residential neighborhood. In addition, the conditions of approval for the Tentative Map assure all public improvements and facilities to serve these proposed residences to create conditions not detrimental to the health, safety and general welfare of persons and property in the vicinity.

**3. The proposed use will comply with the relevant regulations in the San Diego Municipal Code [SDMC].**

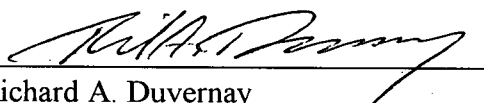
The proposed residential development complies with the relevant regulations of the Municipal Code with deviations as permitted by the applicable PRD Ordinance (SDMC section 101.0901). These deviations approve nine lots of less than the 5,000 square-foot minimum of the underlying R1-5000 zone while maintaining an average greater than the minimum. All dwelling units will comply with the Floor Area Ratio, off-street parking, setbacks for yards, and building height requirements. Deviations to the fencing height requirement is approved for columns to be seven (7) feet in height for visual diversity and vehicular turnaround areas are required on the dwelling units with access to Entreken Way to permit vehicles accessing this street to head-out into traffic. In order to develop this project, the applicant must also satisfy conditions of approval for the accompanying Tentative Subdivision Map in order to record the map and create these legal building sites.

A community plan amendment is also being approved to redesignate this 2.94 acre site to residential from the current commercial land use designation. With all these required actions and conditions for approval, this development will comply with all relevant requirements of the Municipal Code.

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

BE IT FURTHER RESOLVED, that the recommendation of Planning Commission is sustained, and Planned Residential Development Permit No. 96-7622 is hereby granted to Jerry L. Elder, an individual, and Hannon Enterprises, Inc., a California corporation, Owners, and Hallmark Communities, Inc., a California corporation, Permittee, under 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  
07/09/98  
Or.Dept:Clerk  
R-98-1577  
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

**PLANNED RESIDENTIAL DEVELOPMENT PERMIT NO. 96-7622  
RESCISSION OF PLANNED COMMERCIAL DEVELOPMENT  
PERMIT NO. 88-0497  
HALLMARK LEGENDS**

**CITY COUNCIL**

This Permit is granted by the Council of The City of San Diego to JERRY L. ELDER AND HANNON ENTERPRISES, INC., an Individual and a California Corporation, Owners, and HALLMARK COMMUNITIES, INC., a California Corporation, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 101.0901, 111.0805, 111.1122 and 111.0510. The 2.94 acre site is located on the north side of Carmel Mountain Road and the west side of Entreken Way in the CN (proposed R1-5000) zone of the Rancho Peñasquitos Community Plan area. The project site is legally described as Lot 1, Black Mountain Vista North Unit No. 4, Map 12603.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and/or Permittee to rezone the existing 2.94 acre site from the CN to the R1-5000 zone in conjunction with an accompanying Rancho Peñasquitos Community Plan Amendment to designate the site for residential use and to develop, through a Planned Residential Development Permit, a 20-lot single-family residential subdivision, described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated May 26, 1998, on file in the Office of Development Services. The facility shall include:

- a. The development of twenty (20) single-family dwelling units on twenty newly subdivided lots with the three (3) models (with variations), all two-stories in height, having attached 2 or 3-car garages and ranging in floor area from 2,337 to 3,150 square feet.
- b. Landscaping (planting, irrigation and landscape related improvements).
- c. Off-street parking facilities.
- d. Five (5) foot high wood fencing for side and rear yards, a six (6) foot high noise attenuation wall along Carmel Mountain Road with seven (7) foot high columns, and vehicular turning areas for the lots fronting Entreken Way.
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the Permit within 36 months will automatically void the Permit unless an Extension of Time has been granted. 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 appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein 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 Permit is recorded in the office of the San Diego County Recorder.
3. Unless this Permit has been revoked by The City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This 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 in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agencies.
6. 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.)
7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated May 26, 1998, on file in the Office of Development Services. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this Permit shall have been required.
9. 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 the 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 an 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(s) 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.

10. Prior to issuance of any grading permits for this project, a final subdivision map shall be recorded on the subject property.

11. Rezoning of the subject property shall become effective with recordation of the corresponding final subdivision map for the project site.

12. All projects shall be in compliance with SDMC section 101.0101.25 (Gross Floor Area) and all appropriate related definitions.

13. All projects shall be in compliance with SDMC section 101.0214 (Maximum Height of a Building or Structure) and SDMC section 101.0215 (Procedural Requirements for Determination of Structure Height).

#### **ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

14. In order to mitigate potential noise impacts to this subdivision, it is required that, prior to a Certificate of Occupancy, the applicant shall incorporate sound attenuation measures described in the Acoustical Report dated December 18, 1997, to the satisfaction of the City Manager. Specifically, plans shall indicate a solid six-foot sound attenuation barrier located at the property perimeter along Carmel Mountain Road and be called out as an "Environmental Mitigation Measure" on building plans submitted for Permit purposes. This wall shall attenuate exterior noise for the ground floor to below 65 dBA CNEL. This barrier shall be solid and continuous with no gaps or openings, except where access is required to the subject property off Carmel Mountain Road.

15. An acoustical report shall be submitted to include measures indicating that interior noise levels are below 45 DDA based on the average daily traffic volumes (ADDED's) along Carmel Mountain Road (12,000 ADDED's). Construction measures needed to reduce noise levels shall be called out on plans as "Environmental Mitigation Measures." The Acoustical Plan Check Section shall review all building plans to ensure that interior noise levels in the units along Carmel Mountain Road will not exceed 45 dBA CNEL. The Environmental Analysis Section of Development Services shall not approve any final building plans until EAS, in conjunction with the Acoustical Plan Check Section, has reviewed the plans to determine conformance.

The above mitigation monitoring and reporting program will require additional fees and/or deposits to be collected prior to the issuance of building permits, certificates of occupancy and/or final maps to ensure the successful completion of the monitoring program.

## **ENGINEERING REQUIREMENTS:**

16. Building address numbers shall be visible and legible from the streets fronting the property (UFC 901.4.4).
17. All water and sewer requirements for the development of this subdivision shall be conditions of the accompanying Tentative Subdivision Map No. 96-7622.
18. This Planned Residential Development Permit No. 96-7622 shall be consistent with the accompanying Tentative Subdivision Map No. 96-7622 and all conditions contained in the map resolution

## **PLANNING/DESIGN REQUIREMENTS:**

19. No fewer than 40 off-street parking spaces (two parking spaces per dwelling unit) shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated May 26, 1998, on file in the Office of Development Services. Parking spaces shall comply at all times with SDMC Chapter X, Article 1, Division 8 and shall not be converted for any other use unless otherwise authorized by the City Manager.
20. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.
21. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.
22. A topographical survey conforming to the provisions of SDMC section 101.0216 may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.
23. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.
24. The applicant shall disclose to potential purchasers of the dwelling units being developed, the presence of Marine Corp Air Station (MCAS) Miramar to the south and the potential for noise and visual impacts of military aircraft to and from the Miramar Air Station.
25. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
26. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

27. The subject property and associated common areas on the site shall be maintained in a neat and orderly fashion at all times

28. The homeowners of Lots 16-20, as shown on the accompanying Tentative Subdivision Map, all taking access to Entrecken Way shall maintain the vehicular turnaround areas clear of parking, storage or any other obstruction enabling vehicles being able to head-out into traffic.

29. Prior to the issuance of any occupancy permits for the twenty dwelling units proposed for development, the developer shall provide evidence to the Landscape Section, Land Development Review Division of Development Services, that the maintenance of the landscaped strip of land between the sidewalk on Carmel Mountain Road and the noise attenuation wall on the property line, shall be assured.

#### **LANDSCAPE REQUIREMENTS:**

30. Prior to issuance of any building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan dated May 26, 1998, on file in the Office of Development Services. No changes, modification or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

31. Prior to issuance of any Certificate of Occupancy it shall be the responsibility of the Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

32. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit. The Permittee, or subsequent owner, shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

33. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within 30 days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.

**APPROVED** by the Council of The City of San Diego on May 26, 1998, by Resolution No. R-290168.

L:\DUVERNAY\PERMITS\96-7622.WPD



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.

**JERRY L. ELDER, an Individual**  
Owner

By \_\_\_\_\_

**HANNON ENTERPRISES, INC.**  
a California corporation  
Owner

By \_\_\_\_\_

**HALLMARK COMMUNITIES, INC.**  
a California corporation  
Permittee

By \_\_\_\_\_

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

7/9/98  
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