

(R-99-319)

RESOLUTION NUMBER R-290614

ADOPTED ON AUGUST 4, 1998

WHEREAS, Cousins MarketCenters, Inc., Owner/Permittee, filed an application with The City of San Diego for permits to develop a 480,000 square-foot commercial retail and entertainment center and JPI Development, Inc., Owner/Permittee, filed an application for permits to develop a 412-unit multi-family residential development, on portions of an approximately 62-acre site located at the southwest corner of Interstate 15 and Mira Mesa Boulevard in the Mira Mesa Community Planning Area, in the A-1-1 (proposed CA) zone; and

WHEREAS, the project site is legally described as a Portion of the East Half of the Northeast Quarter of Section 31, and of the West Half of the Northwest and Southwest Quarters of Section 32, Township 14 South, Range 2 West, in the City of San Diego; and

WHEREAS, on July 30, 1998, the Planning Commission of The City of San Diego considered Planned Commercial Development/Resource Protection Ordinance/Conditional Use [PCD/RPO/CUP] Permit No. 96-7371 and Planned Residential Development/Resource Protection Ordinance [PRD/RPO] Permit No. 96-7371 and recommended that the City Council approve the permits and related actions for the Mira Mesa MarketCenter project; and

WHEREAS, on August 4, 1998, the Council of The City of San Diego considered PCD/RPO/CUP Permit No. 96-7371 and PRD/RPO Permit No. 96-7371 pursuant to the Municipal Code of The City of San Diego, and voted 9 to 0 to approve the project; 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/Resource Protection Ordinance/Conditional Use Permit No. 96-7371 and Planned Residential Development/Resource Protection Ordinance Permit No. 96-7371:

PLANNED COMMERCIAL/RESIDENTIAL DEVELOPMENT AND CONDITIONAL USE 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 Mira Mesa MarketCenter project includes retail shops and community-serving commercial uses, restaurants, a movie theater, a "town square" element and a residential component. The combination of the commercial and residential developments, including a park-and-ride facility on site, will provide an integration of land uses which will further support and enhance the planned mass transit opportunities in the area in compliance with the Progress Guide and General Plan and Mira Mesa Community Plan.

The proposed project would be in compliance with the Elements of the Progress Guide and General Plan by developing the site with a mix of uses. The Urban Design element of the Progress Guide and General Plan describes mixed use projects as the "key to an active, lively urban environment." The Community Plan encourages such uses in urban areas where transit is conveniently located and where a variety of mobility options can be integrated with a mix of land uses.

The project fulfills the goals of the Housing Element by providing 412 apartment units ranging from 1 to 3 bedrooms. The apartment component of the project will occur in concert with other uses on the project site, including retail, entertainment, office and restaurants. A public pedestrian promenade links the residential and commercial components of the project culminating in a large public outdoor plaza at the retail center. The project's proposed land use mix and strategic location can serve a variety of housing needs and income levels, while enabling future residents of the apartment component and the adjacent college and mobile home park to access most, if not all, of their daily needs without the use of a private automobile.

Goals contained in the Progress Guide and General Plan's Transportation Element include balancing the transportation system with land use types and intensities, coordinating multi-modal transportation systems and establishing a convenient and coordinated transit system. The project would be consistent with these goals through the creation of a mixed use project, with a heavy emphasis on the pedestrian, in a location where existing and planned transit opportunities can be

integrated to create mobility options for employees, visitors and residents of the project. A park-and-ride facility on site will provide for immediate mobility options.

Relative to the Commercial Element of the Progress Guide and General Plan, the primary goal is to develop an integrated system of commercial facilities that meets the needs of San Diego residents and visitors. The project's commercial component will provide a variety of retail and restaurant uses which will serve residents of the project, surrounding neighborhoods, and visitors to the project area. The provision for cinemas will provide entertainment uses for Mira Mesa and surrounding communities.

Therefore, the proposed use will fulfill a community need and will not adversely affect the General Plan or adopted Community Plan. It has been determined that the proposed project meets the purpose and intent of the CA zoning, and will be consistent with the Mira Mesa Community Plan and Progress Guide and General Plan, as amended.

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 Environmental Impact Report [EIR] identified a number of significant impacts, which through implementation of project-related conditions, will be mitigated. The EIR determined that the proposed project would not have a significant effect on the health, safety, and general welfare of persons residing or working in the area. The permit prepared for this project includes a number of conditions of approval relevant to achieving project compliance with the applicable regulations of the Municipal Code for the subject property to assure that health, safety, and general welfare of persons residing or working in the area would not be adversely affected. These conditions include minimum requirements for mitigation for encroachment into biologically sensitive areas, parking, landscaping, open space, traffic improvement measures, and limitations concerning the construction and implementation of the project. Therefore, 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.

C. The proposed use will comply with the relevant regulations of the Municipal Code.

The project design will be consistent with the relevant regulations for this site per the Municipal Code including design standards for the Planned Commercial Development, Planned Residential Development, Conditional Use, and Resource Protection Ordinance Permits. The project also complies with the land use designation, densities, and design standards of the adopted Mira Mesa Community Plan, as amended. Finally, the Permit conditions assure compliance with the Municipal Code. Therefore, the proposed use will comply with the relevant regulations and the Municipal Code in effect for this site.

RESOURCE PROTECTION ORDINANCE PERMIT FINDINGS FOR IMPACTS TO SENSITIVE BIOLOGICAL RESOURCES:

A. The proposed development will not adversely affect the applicable land use plan.

The project site is located within the Mira Mesa Community Plan area. The Community Plan, as amended in 1992, anticipates development of Commercial and Institutional (Hospital) uses on the site through implementation of the Visitor Commercial and Office Commercial land use designations that currently exist for the property. A community plan amendment is proposed in conjunction with the project that would redesignate the site for Commercial and Residential Uses. This redesignation would allow for retail/commercial, entertainment, office and residential land uses.

Because the project site will not be developed with hospital, laboratory, visitor commercial and office uses, the property will be developed with a mix of uses as recommended by the Community Plan. The proposed development plan includes retail commercial, entertainment (cinemas), office and residential uses. The goals of the Mira Mesa Community Plan would be implemented through the development of the Mira Mesa MarketCenter.

The Transportation System Element identifies goals and policies directed at providing an efficient transportation system in the Mira Mesa Community that maximizes opportunities for transit use and encourages alternative modes of transportation. The proposed project is conveniently located near major circulation elements, providing for a variety of transit options. An extensive pedestrian circulation network is provided for both the PCD and PRD portions of the project. A richly landscaped public pedestrian promenade will connect the two portions of the project. The project would be connected to the pedestrian circulation network of the surrounding area via the public promenade, and landscaped sidewalks along Mira Mesa Boulevard, Westview Parkway and Hillery Drive. Bike lanes would be provided on Westview Parkway, in accordance with the Community Plan. A shared-use park-and-ride facility would provide parking for transit users, as well as carpools. The park-and-ride facility is linked to the community portion of the site by way of the public pedestrian promenade. MTDB plans to construct a bus transfer facility immediately south of Hillery Drive. This facility would function as a bus stop for transit users in the area as well as a transfer station between bus routes.

The Mira Mesa MarketCenter project proposes medium density residential uses for a 17.6-acre portion of the site. The Residential Land Use Element defines medium density as 15-30 dwelling units per net acre and specifies that this density can "provide a transition in scale between the medium-high density development near primary arterials and commercial centers and the lower density areas that are dominant in the community." The proposed project would provide 412 multi-family dwelling unit at a density of 24 dwelling units per acre. The project's proposed residential development is compatible in size and scale with the surrounding development along

I-15 and Mira Mesa Boulevard. The project's proposed unit mix of 1, 2, and 3 bedroom units and strategic location can serve a variety of housing needs and income levels.

The goals of the Commercial Land Use Element of the Community Plan recommend conveniently located and well designed commercial development, commercial areas that also serve as centers for community activity, and neighborhood commercial services that are easily accessible to pedestrians and bicyclists. The proposed project would provide a variety of retail and restaurant uses which will serve residents of the project, surrounding neighborhoods, and visitors to the project area. The provision for cinemas will provide entertainment uses for Mira Mesa and surrounding communities. Convenient pedestrian and bicycle access would be available via Mira Mesa Boulevard, Westview Parkway and Hillery Drive. Additional pedestrian access to the commercial and entertainment uses is linked to the residential portion of the proposed project. According to the Commercial Land Use Element, the specific commercial land uses designated for the Mira Mesa MarketCenter property are Visitor Commercial and Office Commercial. The proposed project would include retail commercial, entertainment (cinemas), office and residential uses.

Therefore, the proposed development will not adversely affect the applicable land use plan.

B. The proposed development will not be detrimental to the public health, safety and welfare.

See Findings A, B, and C under Planned Commercial/Residential Development and Conditional Use Permit Findings, above.

C. The proposed development will comply with the applicable regulations of the Municipal Code.

See Findings A, B, and C under Planned Commercial/Residential Development and Conditional Use Permit Findings, above.

D. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to sensitive biological resources.

The site is physically suitable for the design and siting of the proposed development because the site has been previously disturbed and is surrounded by urban development. The proposed development is not located adjacent to any planned or existing public parks or public open space areas, and is not designated in the City's MSCP (or MHPA) as an area to be protected or preserved.

The Mira Mesa MarketCenter project proposes to grade the entire 62-acre site, and will directly impact vernal pools (including San Diego fairy shrimp), wetlands, coastal sage scrub and chaparral habitats. In order to mitigate impacts to these resources, the developer in association with the City of San Diego, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers has agreed to a mitigation program that will reduce the direct impacts to below a level of significance. This mitigation program includes the following:

- Acquisition of the 5-acre Mesa Norte site in Mira Mesa. This parcel shall be preserved in open space in perpetuity as a vernal pool mitigation site. The site currently supports 23 vernal pools. An additional 8,800 square feet of vernal pool habitat shall be restored.
- Acquisition of the 19.93-acre Gleitch parcel located on Del Mar Mesa. This parcel shall be preserved in open space in perpetuity as mitigation for both upland habitats and vernal pools. The site currently supports 19.93 acres of chaparral that can be used toward mitigation for chaparral and non-native grassland. Additionally, the project proponent shall provide \$2,000 for the replacement of a gate to preclude unauthorized access to Del Mar Mesa.
- Acquisition of the 14.7 acres Konyn property to be preserved as open space in perpetuity to offset the remaining upland mitigation requirements.
- Prior to the issuance of a grading permit, the applicant shall provide the City Manager with proof of off-site acquisition and preservation of the above sites.

E. The proposed development will be sited and designed to prevent adverse impacts on any adjacent sensitive biological resources.

The project is completely surrounded by urban development and will not result in any adverse impacts to adjacent sensitive biological resources. The project as redesigned is sited and designed to prevent adverse impacts on any adjacent sensitive biological resources.

F. The proposed development will be consistent with The City of San Diego's Multiple Species Conservation Program [MSCP] Subarea Plan.

As previously indicated, this site is not identified in the City of San Diego Multiple Species Conservation Program [MSCP] Subarea Plan. This is not a site which is designated for preservation and is not adjacent to or connecting as a corridor to other environmentally sensitive areas. Mitigation proposed for impacts to Diegan coastal sage scrub and vernal pool habitat would be in the form of acquisition and permanent preservation of offsite mitigation lands (see Finding "D" above) within the MSCP preserve area at a ratio of) 1:1 for Diegan coastal sage scrub and 3.45:1 for vernal pools. The applicant has identified mitigation areas which are within the City's MHPA which will help to complete a portion of the City's planned preserve. The project site is not within the City's MHPA or the U.S. Fish and Wildlife Service's Vernal Pool

Refuge Area. Therefore, the project would eliminate an area of marginal habitat value where there is no connectivity and replace it with the permanent preservation of high quality habitat which is part of the MHPA.

The only measure that would further minimize the potential adverse effects on Diegan coastal sage scrub and vernal pool habitat would be to leave the site in its current vacant state. However, this measure is not feasible and would deprive the property owner of reasonable use of the land. Additionally, a "No Development" alternative would not be in compliance with the Progress Guide and General Plan or the Mira Mesa Community Plan.

G. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

The Environmental Impact Report identified significant impacts to biological resources. A significant amount of mitigation was identified as necessary to offset the impacts to biological sensitive resources (see Finding "D" above). These mitigation measures will be implemented through the Mitigation, Monitoring, and Reporting Program to assure that impacts to biological resources have been appropriately mitigated. Implementation by the applicant of the mitigation measures identified in the MMRP (via the Tentative Map, Resolution, and corresponding RPO/CUP/PRD and PCD conditions of approval) will reduce adverse impacts of the implementation of adequate and feasible mitigation measures. Therefore, the nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

RESOURCE PROTECTION ORDINANCE - DEVIATIONS FROM SENSITIVE BIOLOGICAL RESOURCES REGULATIONS:

DEVIATIONS FROM THE REGULATIONS OF THIS SECTION MAY BE GRANTED ONLY IF THE DECISION MAKER MAKES THE FOLLOWING FINDINGS:

A. There are no feasible measures that can further minimize the potential adverse effects on sensitive biological resources.

The Mira Mesa MarketCenter project site is completely surrounded by existing urban development. The project site is located west of and immediately adjacent to a major freeway (I-15). The northern boundary of the project is Mira Mesa Boulevard. Property to the west of the site is currently developed with a small commercial center and a mobile home park. The 120-acre campus of San Diego Miramar College is located generally to the south and southwest. Accessibility to the project site and proximity of utilities and services is excellent. Because the project site is relatively flat, significant amounts of earthwork would not be necessary. Although the project site currently supports Diegan coastal sage scrub habitat and low quality vernal pools,

the significance of its role in regional wildlife preservation is highly constrained by its geographic position and surrounding development.

Without a deviation from strict application of RPO, the property owner would be deprived of use of the land by denying the opportunity to develop the site in conformance with the Progress Guide and General Plan and the Mira Mesa Community Plan and at an intensity which would support the required infrastructure and fees associated with developing the site. The Progress Guide and General Plan designates the site for development with "Commercial Recreation" uses. Specific proposals contained in the Mira Mesa Community Plan for the project site identify the site for development with "Institutional" (Hospital), "Visitor Commercial" and "Office Commercial" uses. If such uses do not occur, the Community Plan calls for development of the project site with a mixed-use project (including office, support commercial and residential uses) in a manner which emphasizes a pedestrian-oriented environment and reinforces the use of public transportation. The overall project objective as identified in the Environmental Impact Report was to "develop the site with a mix of commercial, office, entertainment, and residential uses at an intensity which helps support the required infrastructure, fees, and the existing and planned transit opportunities in the area." Staff has determined that the proposed project will meet the objectives of the community plan.

Both the Progress Guide and General Plan and the Mira Mesa Community Plan designate the entire project site for urban development. The project site is an in-fill site, and development would represent a logical completion of the planned land uses in accordance with the Mira Mesa Community Plan. For the purposes of RPO, any urban development of the project site would result in similar impacts on the low quality biological resources located on the site.

The geographic position of the project site, completely surrounded by urban development, minimizes the value of retaining the biological resources located on the site. Mitigation proposed for impacts to Diegan coastal sage scrub and vernal pool habitat would be in the form of acquisition and permanent preservation of offsite mitigation lands (see Finding "D" above) within the MSCP preserve area at a ratio of) 1:1 for Diegan coastal sage scrub and 3.45:1 for vernal pools. The applicant has identified mitigation areas which are within the City's MHPA which will help to complete a portion of the City's planned preserve. The project site is not within the City's MHPA or the U.S. Fish and Wildlife Service's Vernal Pool Refuge Area. Therefore, the project would eliminate an area of marginal habitat value where there is no connectivity and replace it with the permanent preservation of high quality habitat which is part of the MHPA. The only measure that would further minimize the potential adverse effects on Diegan coastal sage scrub and vernal pool habitat would be to leave the site in its current vacant state. However, this measure is not feasible and would deprive the property owner of reasonable use of the land. Additionally, a "No Development" alternative would not be in compliance with the Progress Guide and General Plan or the Mira Mesa Community Plan.

Therefore, there are no other feasible mitigation measures that can further minimize the potential adverse effects on sensitive biological resources.

B. The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land not of the applicant's making.

The proposed deviation, which includes impacting vernal pools and coastal sage scrub on-site, and providing a small area of on-site preservation and large areas of off-site mitigation, is the minimum necessary to afford relief from the conditions of the land not of the applicant's making. Although the total area covered by biologically sensitive resources is relatively small, the resources are geographically distributed throughout the entire project site. As a consequence, it would be nearly impossible to develop a successful and cohesive project while ensuring the long term viability of the resources. Although several biologically superior land use alternatives designed to preserve some habitat have been analyzed, they have been rejected as infeasible for a number of reasons.

Most of the land use alternatives analyzed proposed building a project while preserving some amount of acreage for resource preservation. These scenarios resulted in a lower density, disjointed land use pattern, affecting the project's ability to achieve a number of important goals including: 1) Providing/completing the required infrastructure improvements including those within the "Eight Owners Agreement"; 2) Providing a cohesive, and integrated project that implements many of the City's TOD guidelines; 3) Providing the necessary densities to support transit use; 4) Preserving high quality vernal pools with a strong potential for long-term viability. Other problems associated with preserving resources on-site (causing disjointed development) included the lack of convenient and comfortable pedestrian connectivity within the project, particularly between the college, commercial and residential land uses and the planned bus transit facility and non-exclusive Park and Ride lot provided within the project.

In terms of the on-site preservation of vernal pools, both the State and Federal resource agencies, and the City, after careful analysis, determined that on-site preservation of the vernal pools would not be practicable. The vernal pools on-site are low quality, do not contain a significant amount of target species, and have a low potential for long-term conservation. The project site is isolated and is not located within or near any other core resource areas as identified by the MSCP. The project site is surrounded by existing development, and is designated in the Mira Mesa Community Plan for high density urban land uses. The off-site mitigation offered as part of the project includes approximately 35-acres of high quality habitat most of which is part of the City's MHPA. The off-site mitigation provided is extraordinary, and represents a mitigation ratio for vernal pools of 3.45:1. The off-site mitigation proposed by the project will reduce biological impacts to below a level of significance, and has a much higher potential for long-term viability than those vernal pools found on-site. In addition, economic and land planning analysis provided by the applicant and reviewed by City staff indicate that it would be economically and functionally infeasible to both develop the property and at the same time preserve any significant quantity of vernal pools on-site.

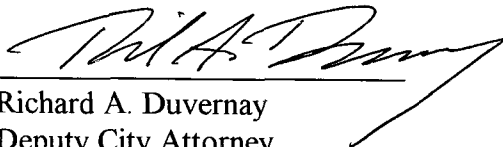
Therefore, the proposed deviation is the minimum necessary to afford relief from the special circumstances or conditions of the land not of the applicant's making.

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 the Planning Commission is sustained, and Planned Commercial Development/Resource Protection Ordinance/Conditional Use Permit No. 96-7371 and Planned Residential Development/Resource Protection Ordinance Permit No. 96-7371 are hereby granted to Cousins MarketCenters, Inc., and JPI Development, Inc., Owner/Permittee, under the terms and conditions set forth in the permits attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By


Richard A. Duvernay
Deputy City Attorney

RAD:lc
10/21/98
Or.Dept:Clerk
R-99-319
Form=permitr.frm
Reviewed by Mike Westlake

PRD was corrected on 11/17/98.

**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

[Two of Two Permits]
**PLANNED RESIDENTIAL DEVELOPMENT/
RESOURCE PROTECTION ORDINANCE PERMIT NO. 96-7371
JEFFERSON AT MIRA MESA MARKETCENTER
CITY COUNCIL**

This Permit is granted by the Council of The City of San Diego to Cousins Market Centers, Inc., Owner, and JPI Westcoast Development, Inc., Permittee, pursuant to the Municipal Code of the City of San Diego. The 17.7-acre site is located at the west of Interstate 15 and south of Mira Mesa Boulevard in the A-1-1 zone (proposed CA zone) of the Mira Mesa Community Planning area. The project site is legally described as a portion of the east 1/2 of the northeast quarter of section 31, and of the west 1/2 of the northwest and southwest quarters of Section 32, Township 14 South, Range 2 West in the City of San Diego.

Subject to the terms and conditions set forth in this permit, permission is granted to Permittee to develop a 412-unit multi-family residential development on a 17.6-acre site described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated August 4, 1998 on file in the Office of Development Services. The facility shall include:

- a. A Planned Residential Development Permit to allow a 412-unit multi-family residential development and a club house/recreation area on a 17.6-acre site; and
- b. A Resource Protection Ordinance Permit to allow the development of biologically sensitive lands; and
- c. Landscaping (planting, irrigation and landscape related improvements); and
- d. Off-street parking facilities; and
- e. An enhanced pedestrian circulation system that includes a landscaped pedestrian promenade linking the residential project site with adjacent land uses including Miramar College, the retail and entertainment commercial center, and the Park and Ride facility; and
- f. A 92-space non-exclusive Park and Ride facility to be built by the developer under a shared management and use agreement with MTDB; and
- g. An on-site vernal pool preservation area to; and

- h. 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 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 August 4, 1998, 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. 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, unless otherwise authorized by the City Engineer, 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 submitted for plan check for the purpose of obtaining building permits shall concurrently submit building plans which meet the submittal requirements of the "Applicant's Guide to Project/Permit Applications;" items 11 through 29, as applicable; together with appropriate plan check fees.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

13. Prior to the issuance of the building permits, the Acoustical Plan Review Section shall review the plans to ensure that usable exterior recreational space close to I-15 shall not be counted toward meeting usable open space requirements unless attenuated to 65 dB CNEL or less.

14. Prior to the issuance of building permits, the applicant shall submit an acoustical study to the satisfaction of the City Manager confirming the ability of proposed residential structural features to meet the 45 dB interior noise standard. The acoustical study shall be submitted when the building plans are filed. The Acoustical Plan Review Section shall review the plans to ensure they are consistent with the approved acoustical study prior to the issuance of building permits.

15. Prior to the issuance of building permits, the Acoustical Plan Review Section shall review the plans to ensure that commercial/residential interfaces, both at existing adjacent off-site

residences and at proposed on-site residential development, shall be protected from noise nuisance through:

a. Suitable barriers (such as block walls with pilasters, earthen berms, or fences) that are a minimum of six feet in height. All barriers that are visible from residential areas should be attractive and compatible with the architectural design of the commercial center.

b. Mechanical equipment (heating, ventilation, air conditioning) shall comply with City of San Diego standards on allowable noise exposure to the closest residential uses.

16. If either the exterior or interior noise analysis determine that the preferred method of attenuating noise levels include the use of berm(s), wall(s) or berm/wall combination(s), then such physical noise attenuating features shall be limited to the southern panhandle portion of the site and shall not exceed 12 feet in height. Landscaping shall be installed on the exterior and interior side of the berm, wall or berm/wall combination sufficient to screen views and soften the appearance of the noise attenuation. Additionally, any wall construction shall be aesthetic in appearance on all sides and shall reflect the architectural style of the residential development proposed for the site.

17. All specific BMPs related to sedimentation and erosion control shall be shown on final grading and engineering plans as required by the City Engineer. All other BMPs shall be included in the Storm Water Pollution Prevention Plan (SWPPP) which shall be kept on site during grading and construction.

18. The applicant shall provide stenciling of all storm drains within the project site indicating that materials placed in the storm drains discharge to a sensitive coastal lagoon as a form of public education. The City Engineer shall review the grading plans to ensure that this requirement is noted on the grading plans.

19. Prior to issuance of each building permit, the developer shall demonstrate that appropriate school payments have been paid to the San Diego Unified School District (SDUSD). The applicant shall be required to pay school fees in accordance with State laws.

20. Prior to the issuance of any grading permit and/or recordation of the first Final Map, the applicant shall show evidence that Mesa Norte, a five acre site in Mira Mesa, has been placed in a conservation easement to the satisfaction of The City of San Diego. The applicant shall show evidence that a management plan for the mitigation site has been submitted for approval prior to the issuance of any grading permit. Additionally, the applicant shall show evidence of implementation of a final Biological Restoration Plan that has been approved by the City, USFWS, and ACOE prior to the issuance of grading permits for the project.

Prior to the issuance of any grading permit and/or recordation of the first Final Map, the applicant shall show evidence that the Gleith parcel, located on Del Mar Mesa, has been either dedicated in fee title to The City of San Diego or placed in a conservation easement.

21. Prior to the issuance of any grading permit and/or recordation of the first Final Map, the applicant shall show evidence that the Konyn property, located in the San Pasqual Valley, has been either dedicated in fee title to The City of San Diego or placed in a conservation easement.

22. Prior to approval of the issuance of any grading permits and/or recordation of the first Final Map, the applicant shall provide evidence of the following: Proof of the obtainment of the 404 permit shall be submitted to the City Manager.

23. Prior to the issuance of any grading permits, the applicant shall show evidence that the easement language and a management plan for each of the mitigation sites has been submitted for approval by the City, ACOE, and the USFWS.

24. Prior to the issuance of grading permits and/or recordation of the first Final Map, the applicant shall provide the preservation of 200 square feet of vernal pool habitat on-site to the satisfaction of the City Manager. Prior to the issuance of grading permits, the applicant shall submit a long-term maintenance plan for the preservation area to the City for approval. Long-term maintenance of the preservation area shall be the responsibility of the applicant. This additional mitigation was voluntarily offered by the applicant and is beyond that required in the EIR and MMRP to mitigate for impacts from the project.

25. In accordance with authorization granted to The City of San Diego from the United States Fish and Wildlife Service (USFWS) pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game (CDFG) Code section 2835 as part of the Multiple Species Conservation Program (MSCP), The City of San Diego through the issuance of this permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of The City of San Diego Implementing Agreement (IA), executed on July 16, 1997 on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by The City of San Diego pursuant to this permit shall be altered in the future by The City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Permittee maintaining the biological values of any and all lands committed for mitigation, pursuant to this permit and of full satisfaction by Permittee of mitigation obligations required by this permit, as described in accordance with Section 17.1D of the IA.

26. Prior to issuance of a grading permit, the applicant shall provide a letter of verification to the Environmental Review Manager of Land Development Review (LDR) stating that a qualified paleontologist and/or paleontological monitor has been retained to implement the monitoring program. The requirement for paleontological monitoring has to be noted on the grading plans. ALL PERSONS INVOLVED IN THE PALEONTOLOGICAL MONITORING OF THE PROJECT SHALL BE APPROVED BY THE ENVIRONMENTAL REVIEW MANAGER PRIOR TO THE PRECONSTRUCTION.

27. The qualified paleontologist shall attend any preconstruction meetings to discuss grading plans with the grading and excavation contractor.

28. The paleontologist or paleontological monitor shall be onsite to inspect for fossils during excavation into previously undisturbed formations. Monitoring shall be done full-time in those formations with a high sensitivity rating, and shall be half-time in those formations with a moderate sensitivity rating. The monitoring time may be increased or decreased at

the discretion of the paleontologist in consultation with EAS. Monitoring shall occur only when excavation activities affect the geologic formation.

29. In the event that fossils are encountered, the paleontologist shall have the authority to divert or temporarily halt construction activities in the area of discovery to allow recovery of fossil remains in a timely fashion. THE PALEONTOLOGIST SHALL IMMEDIATELY NOTIFY LDR OF SUCH FINDING AT THE TIME OF DISCOVERY. LDR staff shall approve salvaging procedures to be performed before construction activities are allowed to resume. Because of the potential for recovery of small fossil remains, it may be necessary to set up a screen-washing operation onsite.

30. Fossil remains shall be cleaned, sorted, repaired, catalogued, and then (with the permission of the owner of the property where the remains were collected) stored in a local scientific institution that houses paleontological collections.

31. The qualified paleontologist shall be responsible for preparation of fossils to a point of identification, and submittal of a letter of acceptance from a local qualified curation facility. A qualified curation facility is defined as a research institution with a permanent commitment to long-term care of paleontological collections and employing professional curatorial staff. If the fossil collection is not accepted by a local qualified facility for reasons other than inadequate preparation of specimens, the project paleontologist shall contact EAS to suggest an alternative disposition of the collection.

32. Prior to the issuance of certification of occupancy, a monitoring results report with appropriate graphics summarizing the results (even if negative), analyses, and conclusions of the above program shall be prepared and submitted to EAS for approval. Any discovered fossil sites shall be recorded at the San Diego Natural History Museum.

ENGINEERING REQUIREMENTS:

33. The Permits shall comply with the conditions of the final map for Mira Mesa Market Center, Vesting Tentative Map No. 96-7371.

PLANNING/DESIGN REQUIREMENTS:

34. No fewer than 842 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated August 4, 1998, on file in the Office of Development Services. Parking spaces shall comply at all times with San Diego Municipal Code, Chapter X, Article 1, Division 8, and shall not be converted for any other use unless otherwise authorized by the City Manager.

35. Signage shall be provided to direct people to the transit center and park and ride lot, once built, and to direct people to overflow parking lot near the theater.

36. 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.

37. All signage associated with this development shall be consistent with sign criteria established by either one of the following:

- a. Approved project sign plan (Exhibit "A," dated August 4, 1998 on file in the Office of Development Services); or
 - b. Citywide sign regulations.
38. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
39. Shutters shall be added to the windows on those elevations of residential buildings visible to Interstate 15 (Type 1 rear elevations and Type 5 side elevations) to provide more interest and detail.
40. If a noise wall is constructed along the eastern edge of the property adjacent to Interstate 15, landscaping to include vines shall be planted on the project side of the wall with cut-outs in the wall to enable the vines to grow on the freeway side of the wall to abate graffiti.
41. The use of textured or enhanced paving on public streets shall meet applicable City standards as to location, noise and friction values.
42. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
43. All uses, except storage and loading, shall be conducted entirely within an enclosed building. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences or a combination thereof. Walls or fences shall be solid and not less than six feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.
44. No merchandise, material or equipment shall be stored on the roof of any building.
45. No mechanical equipment shall be erected, constructed, or enlarged on the roof of any building on this site, unless all such equipment is visually screened within architecturally integrated structures.
46. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the intent of the Citywide Storage Standards for Trash and Recyclable Materials to the satisfaction of the City Manager. In lieu of standard trash receptacles, the projects will provide a trash compactor on-site with necessary storage space for recyclable materials. As part of the management services provided to residents of the apartment units, door-to-door trash and recyclable materials pick-up will be provided on, at a minimum, a weekly basis. A professional disposal service will collect the trash and recyclable materials on an as-needed basis.
47. The controlled access (gates) to this project shall be consistent with the California Streets and Highways Code, City ordinances, policies, and design manuals, and satisfactory to the City Manager.

LANDSCAPE REQUIREMENTS:

48. Prior to issuance of 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 August 4, 1998, on file in the Office of Development Services. No change, modification or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

49. Prior to issuance of any Certificate of Occupancy for a building it shall be the responsibility of the Permittee to install all required landscaping for that building 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.

50. 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*.

51. 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.

WATER UTILITIES CONDITIONS:

52. Prior to the submittal of any public improvement drawings, the applicant shall provide a water study satisfactory to the Water Department Manager. The study shall plan the pressure zone(s) necessary to serve this development.

53. The applicant shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two (2) fire hydrants and/or thirty (30) dwelling units are located on a dead-end main then the subdivider shall install a looped water system.

54. The applicant shall install all facilities as required in the accepted water study, necessary to serve this development. Water facilities, as shown on the approved tentative map, will require modification based on the accepted water study.

55. If this development impacts the existing water pipelines traversing the site, the applicant shall be responsible for any damage caused to or by the pipelines.

56. The subdivider shall grant 50-foot-wide water easements over the existing 60-inch and 66-inch pipelines, located in Hillery Drive, an unnamed street, and substandard

easements, satisfactory to the Water Department Manager. The easements shall contain paved 20-foot-wide vehicular roadways. No structures shall be installed within the easements. No trees or shrubs shall be installed within ten (10) feet of any pipeline. No encroachments shall be allowed within the easements prior to the subdivider obtaining appropriate encroachment removal agreements.

SEWER REQUIREMENTS:

57. Prior to the submittal of any public improvement drawings, the applicant shall provide a sewer study, satisfactory to the Metropolitan Wastewater Department Manager, for the sizing of gravity sewer mains and to show that the existing and proposed mains will provide adequate capacity and have cleansing velocities necessary to serve this development and the drainage basin in which it lies.

58. The applicant shall install all facilities, as required by the accepted sewer study, necessary to serve this development. Sewer facilities, as shown on the approved tentative map, will require modification based on the accepted sewer study.

WATER AND SEWER REQUIREMENTS:

59. The subdivider shall grant adequate water, sewer, and/or access easements, including vehicular access to each appurtenance (meters, blow offs, air valves, manholes, etc.), for all public water and sewer facilities that are not located within public rights-of-way, satisfactory to the Water and Metropolitan Wastewater Departments' Managers. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the appropriate Department Manager. Minimum easement widths: water mains with services or fire hydrants - 24 feet, sewer mains with manholes - 20 feet. The easements shall be located within single lots. No structures or trees shall be installed in or over any easement prior to the applicant obtaining an encroachment removal agreement.

60. The applicant shall design all proposed public water and sewer facilities to the most current edition of the "City of San Diego Water & Sewer Design Guide." Facilities that do not meet the current standards shall be private.

61. The applicant shall provide evidence, satisfactory to the Water and Metropolitan Wastewater Departments' Managers, indicating that each lot will have its own water service and sewer lateral or provide CC&Rs or other reciprocal agreement for the operation and maintenance of on-site private water and sewer mains that serve more than one lot. Also, provide private easements for the private mains.

62. All common areas and/or open spaces that require irrigation shall be irrigated with reclaimed water as specified in City Council Ordinance O-17327. The applicant shall design and install a reclaimed water distribution system within the subdivision in accordance with "Rules and Regulations for Reclaimed Water Use and Distribution within the City of San Diego" satisfactory to the Metropolitan Wastewater Department Manager. The irrigation system shall initially be supplied from the potable water system until reclaimed water is available. The system shall be designed to allow the conversion from potable to reclaimed water service and avoid any cross connections between the two systems.

Approved by the Council of The City of San Diego on August 4, 1998, by Resolution No. R-290614.

10/22/98

11/17/98 CORRECTED

L:\DUVERNAY\PERMITS\96-7371R.WPD

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.

Cousins MarketCenters, Inc.
Owner

By _____

JPI Westcoast Development, Inc.
Permittee

By _____

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

10/22/98
11/17/98 CORRECTED
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