

RESOLUTION NUMBER R-291683

ADOPTED ON MAY 25, 1999

WHEREAS, NMSBPCSLDHB, a California Limited Partnership, Owner, and Sharp Rees-Stealy, Permittee, filed an application with The City of San Diego for Resource Protection Ordinance/Conditional Use Permit [RPO/CUP] No. 98-0461 (Amendment to M-IP Permit No. 94-0513) to construct a 55,000 square-foot, two-story medical healthcare facility (the Sharp Rees-Stealy Rancho Bernardo Health Care Facility), for the project, located at 16950 to 16966 Via Tazon, and legally described as Lot 9, Bernardo Industrial Park North, Map No. 9570, City of San Diego, State of California, and a portion of Lot 11, in the Rancho Bernardo Community Planning area, in the M-IP zone; and

WHEREAS, on March 25, 1999, the Planning Commission of The City of San Diego considered RPO/CUP Permit No. 98-0461 (Amendment to M-IP Permit No. 94-0513), and pursuant to Resolution No. 2773-2-PC, voted 5-0 to recommend City Council approval of the permit; and

WHEREAS, Richard A. Belzer, Chairman of the Rancho Bernardo Community Planning Board, and Donald F. Buckley, Chief Executive Officer of GP Batteries USA, appealed the decision of the Planning Commission in approving RPO/CUP No. 98-0461 (Amendment to M-IP Permit No. 94-0513); and

WHEREAS, the matter was set for public hearing on May 25, 1999, 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 RPO/CUP Permit No. 98-0461 (Amendment to M-IP Permit No. 94-0513):

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 proposed development will fulfill a community need and will not adversely affect the City's Progress Guide and General Plan. The existing Rancho Bernardo Sharp Rees-Stealy facility has been providing vital and essential medical services to the community and surrounding areas for the past ten years. The expansion and relocation of the current facility would enhance medical services to the community by offering improved and expanded services in a less crowded environment. Pursuant to the Rancho Bernardo Community Plan, this project provides a service within the industrial park that will benefit both the residents and employees of Rancho Bernardo. The proposed use is in an area of the Rancho Bernardo Community Plan designated for industrial use. However, this proposed use would be an ancillary support facility, supporting and providing intermediate care to the community. This use is permitted in the Rancho Bernardo industrial area with a Conditional Use Permit (CUP). Therefore, the proposed use of this site as a Sharp Rees-Stealy medical healthcare facility will not adversely affect the General Plan or the Rancho Bernardo Community Plan.

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.

Permit conditions together with the Mitigation, Monitoring and Reporting Program of the Mitigated Negative Declaration (LDR No. 98-0461) for this project will ensure that the health, safety and welfare of those residing and working in the area will not be affected, and that other property in the vicinity will not be impacted. All feasible efforts have been made to reduce impacts to sensitive lands on the site. In order to mitigate biological impacts, Sharp Rees-Stealy is required to purchase 0.5 acres of Tier II habitat in the San Pasqual Environmental Preserve. In order to mitigate traffic impacts, a traffic signal will be provided at the intersection of Via Tazon/Rancho Bernardo Road, and the applicant will pay for fair share improvements for the future widening of a portion of Rancho Bernardo Road prior to the issuance of building permits. In order to reduce potential water quality impacts from increased runoff, erosion and sedimentation, Sharp is required to prepare and implement a Storm Water Pollution Prevention Plan pursuant to a National Pollution Discharge Elimination System Permit.

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

The proposed use of the site and project design is consistent with the relevant development regulations of the Municipal Code, including requirements for Conditional Use Permits and Resource Protection Ordinance Permits through alternative compliance. The project also complies with the Rancho Bernardo Community Plan. The impact to sensitive slope areas that qualify for hillside review are minimal, at 0.23 acres, and therefore will meet the alternative compliance findings under the Resource Protection Ordinance. Therefore, the proposed use will comply with the relevant regulations and the Municipal Code in effect for this site.

RESOURCE PROTECTION ORDINANCE PERMIT FINDINGS:

A. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan.

The proposed development will not adversely affect the City's Progress Guide and General Plan because it will retain an existing supportive and complementary use within Rancho Bernardo. Pursuant to the Rancho Bernardo Community Plan, which is a component of the San Diego Progress Guide and General Plan, this project provides a service that will benefit both the residents and employees of the Rancho Bernardo Community, as well as surrounding communities. The proposed development will provide for the relocation and continuation of an existing intermediate care facility within the community. The proposed use is in an area of the Rancho Bernardo Community Plan designated for industrial use. However, according to the Rancho Bernardo Community Plan, this proposed use would be an ancillary support use serving the community. Such uses are permitted in the Rancho Bernardo industrial area with Conditional Use Permits (CUP). Therefore, the proposed use of this site as a Sharp Rees-Stealy medical healthcare facility will not adversely affect the City of San Diego's Progress Guide and General Plan.

B. The proposed development will conform to the community plan for the area and any other applicable plans, policies and ordinances.

The proposed expansion and relocation of the existing Rancho Bernardo Sharp Health Care clinic is an allowable use within the industrial designation of the Rancho Bernardo Community Plan. This proposed use would be an intermediate care facility serving the community, which is permitted in industrial zones with a Conditional Use Permit (CUP). Therefore, the proposed use of this site as a Sharp Rees-Stealy medical healthcare facility is consistent with the Rancho Bernardo Community Plan. In addition, the San Diego Municipal Code requires CUPs for hospitals or intermediate care facilities, which are viewed as facilities where sick or injured are given medical care.

C. The proposed development will be sited, designed, constructed and maintained to minimize, if not preclude, adverse impacts on environmentally sensitive lands.

The proposed development has been designed to minimize and mitigate impacts to environmentally sensitive lands. Although most of the site has been previously disturbed, portions of the site do contain sensitive biological resources (0.45 acres) and steep slopes. The proposed grading would occur at the edge of the existing pad and at the bottom of the existing slopes. The project was sited and designed to utilize the previously disturbed portion of the site while reducing impacts to the more environmentally sensitive resources. The impact to sensitive slope areas that qualify for hillside review are minimal, at 0.23 acres. The impacted biological resources do not occur within the Multiple Habitat Planning Area. Impacts to biological resources will be mitigated through the purchase of land (0.5 acres) in the San Pasqual Environmental Preserve, as required through the Mitigation, Monitoring and Reporting Program associated with the Mitigated Negative Declaration.

D. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks and public open-space areas and will provide adequate buffer areas to protect such resources.

The Sharp-Rees Stealy project site is located within an existing, previously disturbed industrial park that is proposed to be completely developed with industrial and business park land uses. There are no parks or public open-space areas adjacent to the project site that contain environmentally sensitive lands or resources. The project will be sited and designed, and is required to completely mitigate adverse on-site impacts to environmentally sensitive lands. Therefore, no buffer areas will be required to prevent adverse impacts to environmentally sensitive lands/resources located within open space or parks.

E. The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards.

The proposed development will minimize the alterations of natural landform, since the majority of the project site is located on a previously disturbed building pad. In addition, the proposed development will not result in undue risks from geological and erosional forces and/or flood and fire hazards, since it will be built in conformance with the geotechnical study recommendations contained in the "Update Geotechnical Investigation, Bernardo Industrial Park North, Lot 9, Pad D, San Diego, California", and the "Supplemental Geotechnical Investigation, West Parking Lot Slope Study, Pad D, Lot 9, Bernardo Industrial Park North, dated October 13, 1988."

F. Feasible measures to protect and preserve the special character or the special historical, architectural, archaeological or cultural value of the affected significant prehistoric or historic site or resource have been provided by the applicant.

The project site is a vacant, previously disturbed pad surrounded by existing industrial park development. There are no special historical, architectural, archaeological or cultural resources, features or values on the site. A small portion of the site contains soils known to have the potential to contain paleontological resources, which will be monitored during grading and mitigated as necessary, according to the Mitigation, Monitoring, and Reporting Program.

ALTERNATIVE COMPLIANCE FINDINGS FOR STEEP SLOPE ENCROACHMENT:

I. Alternative compliance shall be granted to prevent unnecessary hardship to the applicant if all of the following findings can be made:

A. There are special circumstances or conditions applying to the land that are peculiar to such land and not of the applicant's making whereby the strict application of the provisions of this section would deprive the property owner of reasonable use of the land.

The City's Hillside Review Overlay Zone (HR) maps indicate steep slopes on the project site. However, the site has been previously disturbed and no longer contains the steep slopes that are currently shown on the City's Zoning maps. The current topography on 0.37 acres of the site is a flat, buildable area that is mapped hillside, but does not meet the definition of steep slopes. Under the strict application of the RPO, the applicant would be unable to build upon this flat portion of the site. Preserving this portion of the site would not serve the purpose and intent of the RPO ordinance because this area no longer contains steep slopes and provides none of the hillside qualities that the RPO is meant to preserve. This would deprive the applicant of reasonable use of this portion of the site while providing no public benefit of environmentally sensitive lands.

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

The Sharp Rees-Stealy project proposes to encroach 0.68 acres into steep slopes located along the western portion of the property. The proposed project was designed to minimize encroachment into environmentally sensitive lands. This proposed encroachment into steep slopes permits Sharp to provide sufficient healthcare space and adequate parking for their patient population. Design alternatives were considered to reduce the amount of encroachment into steep slopes, however these alternatives were deemed infeasible because they either reduced the size of the facility or the amount of required parking. Based on the applicant's experience at both their existing Rancho Bernardo site and other facilities, their required parking demands exceed the City's minimum standards. The 300 standard-sized parking spaces currently proposed is the minimum amount necessary to provide adequate parking for their elderly patient population.

Without Alternative Compliance, Sharp would be unable to develop the site in conformance with Sharp's primary project goals, including providing essential and expanded medical services to their unique patient population which resides in and around Rancho Bernardo.

C. Alternative compliance for the development will not adversely affect the Progress Guide and General Plan for the City of San Diego.

Pursuant to the Rancho Bernardo Community Plan, this project provides a service within the industrial park that will benefit both the residents and employees of Rancho Bernardo. The proposed use is in an area of the Rancho Bernardo Community Plan designated for industrial use. This proposed use would provide intermediate care services to the community, and would be an ancillary support use serving the community. This use is permitted in the Rancho Bernardo industrial area with a Conditional Use Permit (CUP). Therefore, alternative compliance for the proposed use of this site as a Sharp Rees-Stealy medical healthcare facility will not adversely affect the General Plan or the Rancho Bernardo Community Plan.

D. The proposed development will conform to the adopted community plan for the area and any other applicable plans, policies and ordinances.

The proposed expansion and relocation of the existing Rancho Bernardo Sharp Health Care clinic is an allowable use within the industrial designation of the Rancho Bernardo Community Plan. This proposed use would provide an intermediate care facility to the community, and would be an ancillary support use serving the community. Intermediate care facilities are permitted in the Industrial zone with a Conditional Use Permit (CUP). Therefore, the proposed use of this site as a Sharp Rees-Stealy medical healthcare facility is consistent with the Rancho Bernardo Community Plan. In addition, the San Diego Municipal Code requires CUPs for hospitals or intermediate care facilities, which are viewed as facilities where sick or injured are given medical care.

II. Alternative compliance shall be granted to ensure the provisions of extraordinary benefit to the general public on making findings of overriding social and economic consideration in addition to the following findings:

A. There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands while still providing the extraordinary benefit.

In order to achieve their mission, Sharp needs to provide patients with access to additional medical specialists and services such as physical therapy and parking. In their current location at 16879 West Bernardo Drive, they are unable to achieve their mission because there is not adequate space to decompress existing staff and services, let alone add new services. The current site and building cannot support expansion. A larger, relocated facility is necessary for Sharp to achieve their mission.

Approximately five years ago, Sharp began the process of identifying a new site that will allow for construction of a larger facility to achieve their mission for the Rancho Bernardo Community. They considered many sites in the local area, and determined that the proposed site, located at 16950-16966 Via Tazon, is the best site for the new clinic.

Due to the fact the proposed project will be developed on a pregraded industrial lot, certain inherent restrictions are placed on the property which limit the developable area of the lot. In addition to these preexisting constraints, the Sharp-Rees-Stealy medical clinic requires a parking lot larger than would be required by the City's minimum standards. The additional parking lot area is required to provide adequate and safe parking lot circulation for the elderly patient population. In addition, the parking lot would provide a sufficient supply of parking spaces for the visiting patients, based on the requirements developed from Sharp's experience at other sites and similar facilities. Because of the existing lot constraints and required parking demands, this project will be required to utilize the entire developable area of the subject lot. Furthermore, a small portion of the necessary developable area would encroach into sensitive slopes to accommodate the proposed development. Any reduction in developable area would reduce the on-site parking area below that required for the project, and would therefore render the project infeasible.

B. The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan.

Alternative compliance with the HR ordinance will not adversely affect the City's Progress Guide and General Plan because it will retain an existing supportive and complementary use for the surrounding Rancho Bernardo industrial park and surrounding Rancho Bernardo residential community, consistent with the provisions of the Rancho Bernardo Community Plan. Alternative compliance with the HR ordinance will specifically provide for the relocation and continuation of an existing valuable health care service within the community, relocating it from its existing location to the proposed new location approximately one-quarter mile away. Because of the special circumstances on the site, alternative compliance is necessary to provide sufficient and adequate parking for the proposed development, without which the project would be infeasible for the intended use.

C. The proposed development conforms to the adopted community plan for the area.

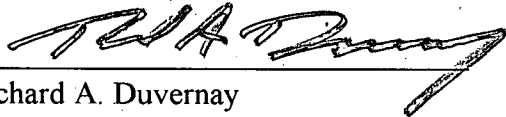
The proposed relocation of the existing Rancho Bernardo Sharp Health Care clinic will specifically implement a provision of the Industrial element of the Rancho Bernardo Community Plan that allows "other such establishments providing support services to major residents of the industrial park and the community." The existing Rancho Bernardo Sharp Health Care clinic has provided valuable health care services for the occupants of the Rancho Bernardo industrial park and the surrounding residential community for over ten years. This CUP will allow for the continuation and improvement of this valuable community resource at a new location approximately one-quarter mile from its existing location, consistent with the provisions of the community plan.

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 appeals of Richard A. Belzer, Chairman of the Rancho Bernardo Community Planning Board, and Donald F. Buckley, Chief Executive Officer of GP Batteries USA, are overruled; the recommendation of the Planning Commission is sustained; and RPO/CUP Permit No. 98-0461 (Amendment to M-IP Permit No. 94-0513) is granted to NMSBPCSLDHB, a California Limited Partnership, Owner, and Sharp Rees-Stealy, 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

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08/16/99
Or.Dept:Clerk
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Form=permitr.frm
Reviewed by Mike Westlake

**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

**RESOURCE PROTECTION ORDINANCE/
CONDITIONAL USE PERMIT NO. 98-0461
SHARP REES-STEALY RANCHO BERNARDO
(AMENDMENT TO M-IP PERMIT NO. 94-0513)
CITY COUNCIL**

This Permit (amendment to rescind M-IP Permit No. 94-0513) is granted by the Council of The City of San Diego to NMSBPCSLDHB, a California Limited Partnership, Owner, and Sharp Rees-Stealy, Permittee, pursuant to the Municipal Code of the City of San Diego. The 7.7 acre site is located at 16950 to 16966 Via Tazon in the M-IP Zone of the Rancho Bernardo Community Planning Area. The project site is legally described as Lot 9, Bernardo Industrial Park North, Map No. 9570, City of San Diego, State of California; and a portion of Lot 11.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to develop a 55,000 square-foot, two-story medical healthcare facility described as, and identified by size, dimension, quantity, type and location on the approved Exhibit "A," dated May 25, 1999, on file in the Office of Planning and Development Review. The facility shall include:

- a. One 55,000 square-foot, two-story medical healthcare facility;
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Off-street parking facilities; and
- d. 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 Planning and Development Review; 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. 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.

7. 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 25, 1999, on file in the Office of Planning and Development Review. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

8. 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 new 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.

9. All projects shall be in compliance with those sections of the Municipal Code regarding Topographical Survey Requirements and all building plans shall be predicated upon said concurrently submitted topographical survey. Said topographical survey (and accompanying grading plan) shall accurately depict both pre-existing grade and finished grade as set forth in the Municipal Code.

10. The issuance of this permit by The City of San Diego does not authorize the applicant 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. § 1531 et seq.).

11. 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) pursuant to Fish and Game 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, and 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.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. The applicant shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the Mitigated Negative Declaration, LDR No. 98-0461, satisfactory to the City Manager and the City Engineer. Prior to issuance of building permits, all mitigation measures as specifically outlined in the MMRP shall be implemented.

ENGINEERING REQUIREMENTS:

13. Prior to the issuance of any building permits, the applicant shall obtain a grading permit from the City Engineer (referred to as an "engineering permit") for the grading proposed for this project.

14. Prior to the issuance of any building permits, the applicant shall show both lot 9 and 11 (crossing out that portion not being considered as part of this development). The applicant can also perform a lot line adjustment parcel map to consolidate the additional parking shown in lot 11 as part of lot 9.
15. The drainage system proposed for this project, as shown on the approved plans, is subject to approval by the City Engineer.
16. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the installation of a standard driveway on Via Tazon satisfactory to the City Engineer.
17. Prior to building occupancy, the applicant shall conform to those sections of the Municipal Code regarding "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.
18. Prior to the issuance of building permits, the applicant shall assure, by permit and bond, the installation of a traffic signal at the intersection of Rancho Bernardo Road and Via Tazon, satisfactory to the City Engineer.
19. Prior to issuance of building permits, the applicant shall contribute a fair share to the improvement of Rancho Bernardo Road, from west of West Bernardo Drive to I-5 Northbound Ramps, as a six-lane major street, satisfactory to the City Engineer. Construction costs borne by the applicant and associated with the installation of the traffic signal at the intersection of Rancho Bernardo Road and Via Tazon that exceed the applicant's fair share cost of providing the traffic signal shall be applied toward the applicant's fair share cost for the improvements to Rancho Bernardo Road.

PLANNING/DESIGN REQUIREMENTS:

20. No fewer than 300 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated May 25, 1999, on file in the Office of Planning and Development Review. Parking spaces shall comply at all times the Municipal Code and shall not be converted for any other use unless otherwise authorized by the City Manager.
21. An entry sign clearly delineating the Sharp Rees-Stealy entrance shall be provided at the driveway entrance.
22. A traffic hump on the exit side of the Sharp Rees-Stealy driveway, before the stop sign at Via Tazon, shall be provided.
23. The landscape strip separating the adjacent property owner to the east (GP Batteries) from the Sharp Rees-Stealy site shall be heavily landscaped with shrubs, trees and groundcover.
24. Retaining walls shall not exceed eight feet in height in any case. If additional height is needed, two retaining walls separated by a five foot flat landscape strip shall be used.

25. 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.

26. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and 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.

27. A topographical survey conforming to the provisions of the Municipal Code 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 regulations of the underlying zone. The cost of any such survey shall be borne by the Permittee.

28. 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.

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

- a. Approved project sign plan (Exhibit "A," dated May 25, 1999, on file in the Office of Planning and Development Review); or
- b. Citywide sign regulations.

30. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.

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

32. 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.

33. No mechanical equipment, tank, duct, elevator enclosure, cooling tower or mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed structure whose top and sides may include grillwork, louvers and latticework.

34. No mechanical equipment shall be erected, constructed, or enlarged on the roof of any building on this site, unless all such equipment is contained within a completely enclosed architecturally integrated structure.

35. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked Exhibit "A," dated May 25, 1999, on file in the Office of Planning and Development Review.

36. This Conditional Use Permit shall expire on May 25, 2029 (30 years). Prior to the expiration date of this Conditional Use Permit, the Permittee may submit a new Conditional Use Permit application to the City Manager for consideration with review and a decision by the appropriate decisionmaker at that time

LANDSCAPE REQUIREMENTS:

37. Prior to issuance of any grading, or 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 25, 1999, on file in the Office of Planning and Development Review. No change, modification or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

38. Prior to issuance of grading permits, interim landscape and erosion control measures, including hydroseeding of all disturbed land (all slopes and pads), shall be submitted to the satisfaction of the City Manager (including the Environmental Section) and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated May 25, 1999, on file in the Office of Planning and Development Review and all other applicable conditions of related permits.

39. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Permittee shall initiate such measures within 45 days from the date that the grading of the site is deemed to be complete. Such erosion control and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the Landscape Technical Manual.

40. 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.

41. 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.

42. 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 thirty 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 25, 1999, by Resolution No. R-291683.

L:\DUVERNAY\PERMITS\IP98-0461.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.

NMSBPCSLDHB,
a California Limited Partnership
Owner/Permittee

By _____

SHARP REES-STEALY
Permittee

By _____

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

8/16/99

LADUVERNAYPERMITSAP98-0461.WPD