

RESOLUTION NUMBER R-292172

ADOPTED ON SEPTEMBER 14, 1999

WHEREAS, the Southeastern Economic Development Corporation [SEDC], Owner/Permittee, filed an application with The City of San Diego for a permit to develop a 42.01 acre site with a community shopping center of approximately 243,427 square feet of retail space including a multiplex movie theater, home improvement center, and other retail uses, as well as providing for flood control improvements to South Los Chollas Creek, site landscaping for a park-like interface between the retail center and South Los Chollas Creek, dedication and improvement of a north/south street between Imperial Avenue and Ocean View Boulevard, improvements to both Imperial Avenue and Ocean View Boulevard, and other on-site improvements, for the Imperial Marketplace project, located between Imperial Avenue and Ocean View Boulevard, between 42nd and 45th Streets, and legally described as Lot 30, Map No. 9568; Lot 31, Map No. 9615; Lot 151, Map No. 9779; Lots 152 and 195, Map No. 9786; and all of North Creek, Unit 2, Map No. 12030, in the Southeast San Diego Community Plan area, in the SF-5000 and CT-2 zones; and

WHEREAS, on August 5, 1999, the Planning Commission of The City of San Diego considered Southeast San Diego Planned District/Resource Protection Ordinance [SSDPD/RPO] Permit No. 96-0338, and voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on September 14, 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 SSDPD/RPO Permit No. 96-0338:

SOUTHEAST SAN DIEGO PLANNED DISTRICT FINDINGS:

A. The proposed use and project design meet the general purpose and intent of San Diego Municipal Code Chapter X, Article 3, Division 17, complies with the recommendations of the Southeast San Diego Planned District for this site, and will not adversely affect the Southeast San Diego Community Plan, the City's Progress Guide and General Plan or other applicable plans adopted by the City Council in effect for this site.

The proposed project is designed to achieve consistency with the purpose and intent of the planned district which calls for a wide range of commercial facilities to serve the surrounding neighborhood. Further the project is consistent with the urban design element which requires new development at this site to provide a park-like interface between and orientation of the retail center with the South Los Chollas Creek; dedication and improvement of a north/south street between Imperial Avenue and Ocean View Boulevard; improvements to Imperial Avenue and Ocean View Boulevard; and other on site improvements. These features would be provided by the implementation of the project.

The proposed project is consistent with the Southeast San Diego Community Plan. The proposed design of the development would be consistent with the desired relationship between South Chollas Creek and the project as required by the community plan. The placement and orientation of buildings, open space, park-like features, an urban mini-plaza, and site landscaping contribute project features to achieve consistency with the recommendations and goals of the community plan for this site. Federal Emergency Management Agency requirements necessary to address on-site and off-site flood control conditions will also benefit the immediate neighborhood and the community by the improvements to the South Chollas Creek as described on the plans.

B. The proposed development shall be compatible with existing and planned land uses on adjoining properties and shall not constitute a disruptive element to the surrounding neighborhood and community. Architectural harmony with the surrounding neighborhood and community shall be achieved as far as practicable.

The design and use of the site as a retail commercial center is consistent with the requirements of the Southeast San Diego Planned District and the recommendations Southeast San Diego Community Plan. The retail center is designed to achieve architectural compatibility and integrity internally and would be screened from the adjacent residential homes in accordance with the requirements of the planned district. The development of this site with a retail center would provide needed services and jobs in the community; would create a relationship between the Cultural Center south of Ocean View Boulevard; would harmonize architecturally by means of a consistent theme within the development; and would, through the conditions of approval, not present a disruptive element to the surrounding neighborhood.

C. 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 proposed permit, which controls the continued operation and development of the retail center, contains conditions to protect the health, safety, and general welfare of persons residing or working in the area. These conditions have been written to protect those persons working and residing in and around the site. Conditions of approval have been included to preclude any adverse affects from occurring to other properties in the vicinity.

D. The proposed use will comply with the relevant regulations of the Municipal Code in effect for this site.

The proposed permit will govern the proposed use and require compliance with the relevant regulations of the Municipal Code for this use. No deviations or variances have been requested or are being approved for the proposed project.

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 site is identified by the Southeast San Diego Community Plan, the City's Progress Guide and General Plan, and the Central Imperial Redevelopment Plan for development with commercial or residential uses. The proposed uses on this site, which are consistent with the land use policy documents guiding development in the community, will not adversely affect the community or City and will yield value and provide needed services to the community.

The proposed project would provide an infill development in a redevelopment area; would remove blight from the community; would add usable parkland in a highly urbanized area that is deficient in open space; would develop a multi-use open space linkage designated in the Southeast San Diego Community Plan implementing of a part of the City-wide open space system; and would protect flood-prone areas against loss of life, significant property damage, and disruption of traffic or utility services by implementing flood control improvements. The improved channel would be designed with a natural cobble bottom and a combination of natural and Armorflex (slopes, all of which would be hydroseeded with native species, to retain the natural appearance of drainage areas to the extent feasible. The proposed project would implement habitat conservation goals by locating development outside of designated MHPA areas as identified in the City's MSCP Subarea Plan; would provide attractive quality community and neighborhood commercial facilities offering a variety of goods and services to meet community needs; would increase employment opportunities to improve the social and economic well-being of the community; would improve north-south access in the community by constructing a public street through the site connecting Imperial Avenue and Ocean View; would provide increased

opportunities for the public enjoyment of open space area, including limited access to South Chollas Creek; would lower Imperial Avenue to improve sight-line distance for drivers to improve safety along the existing roadway; would increase the aesthetic quality of the street corridors to encourage pedestrian activity by implementing landscaping and streetscape improvements to Imperial Avenue and Ocean View Boulevard along the project frontage; would improve pedestrian and bicycle access to public transportation by providing a pedestrian and bicycle path along South Las Chollas Creek that connects with existing, relocated bus stops along Imperial Avenue and Ocean View Boulevard; would enhance bicycle circulation by providing a shared pedestrian and bicycle path along South Las Chollas Creek and providing a designated bike lane along Imperial Avenue where none currently exist; would help to revitalize and improve the economic environment of the community by providing a development that would increase the property tax base and redevelopment tax increment funds and would in turn provide additional funding sources to complete other redevelopment activities throughout the community; and would implement the traffic improvements identified in the Redevelopment Plan for any development at the project site.

Therefore, the Imperial Market Place project achieves many City of San Diego goals and objectives that are identified in applicable adopted land use plans and would not adversely affect applicable land use plans. The proposed development will conform with the Progress Guide and General Plan, the Southeast San Diego Community Plan, the Central Imperial Redevelopment Plan, the relevant policies of The City of San Diego, and the relevant San Diego Municipal Code regulations. The proposed development will be consistent with the relevant regulations of the Municipal Code, as allowed by a discretionary decision.

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

The removal of blighting influences from the project site would remove public health and safety hazards from the project area and, thus, improve the welfare of the community. In addition to this general principle, the proposed project includes several specific features to improve public health, safety, and welfare in the community. Conditions of approval included within Southeast San Diego Planned District/Resource Protection Ordinance Permit No. 96-0338 address the health, safety, and general welfare of persons residing or working the area and properties in the vicinity to preclude detrimental effects from the development of the project and its continued operation. Compliance with all building, electrical, plumbing, and zoning regulations, as allowed through a Southeast San Diego Planned District/Resource Protection Ordinance permit, will be achieved by the proposed development at this site.

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

As allowed through a Southeast San Diego Planned District/Resource Protection Ordinance permit, the proposed development and subdivision will comply with all relevant regulations of the Municipal Code. Except for impacts to sensitive biological resources as

allowed by the Municipal Code through Deviation Findings, additional variances or deviations to the Municipal Code are not required for the approval of the proposed Vesting Tentative Map, as allowed by a discretionary decision through a Southeast San Diego Planned District/Resource Protection Ordinance permit. The project would be consistent with the CT-2 zoning for the site, which is intended to accommodate a wide variety of community shopping and business needs and services which are both retail and wholesale in nature. The proposed project will comply with the Southeast San Diego PDO development standards for new commercial development to ensure quality development. These standards include minimum lot areas and dimensions; building heights; lot coverage and floor area ratios; signage; walls; outdoor storage areas; off-street parking; off-street loading facilities; site landscaping; and special regulations to address the hours of operation, lighting, offsetting planes and building facade variation.

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.

Based upon general development practices, prevailing standard of care within the land development industry, and the known on-site physical attributes of soils, geology, absence of earthquake faults or other known subsurface hazards, the proposed site has been determined to be suitable to support the proposed development.

The proposed development is not located in the City's MSCP (or MHPA) as an area to be protected or preserved. The Biology Report prepared for the Imperial Market Place project concluded that the project would have a significant direct impact to 0.33 acres of Wetlands, 1.65 acres of Natural Flood Channel, 2.27 acres of coastal sage scrub and 27.20 acres of non-native grasslands on the proposed site. However, impacts to sensitive species and habitats identified on the site will be minimized and mitigated to a level below significance by implementation of the Mitigation Monitoring and Reporting Program as required in the conditions of approval.

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

The areas surrounding the project site are urbanized and contain no sensitive biological resources. North of the project is the Greenwood Cemetery, south is the Community College Education Cultural Complex, east and west is existing residential development. The upstream and downstream portions of the South Las Chollas Creek in the project area are fully lined, concrete channels with no habitat value.

The proposed project is designed to avoid, minimize, and preclude adverse impacts on adjacent sites where sensitive biological resources may be present. The analysis for the project concluded that potential impacts to adjacent sites where sensitive biological resources may be present would not occur as a result of site development .

Geotechnical information indicates the site is physically suitable for the grading design of the proposed Tentative Map and the future building locations indicated on the Site Plan. Due to the conditions of approval, revegetation of all manufactured slopes, and the placement and design of proposed buildings, the proposed design of the project will minimize the alterations of natural landforms, will not result in risks from geological and erosional forces and/or flood and fire hazards, and will avoid and preclude adverse impacts on adjacent sites where sensitive biological resources may be present.

All slopes adjacent to open space areas will be revegetated with native plants possessing deep rooting characteristics for added slope stability and will be low spreading varieties to provide erosion control and slope protection. The planting and continued maintenance of these slopes, and all slopes within the project, will prevent soil erosion, silting of topographically lower areas which would affect health, safety and general welfare by covering the manufactured slopes with living, deep rooted, low spreading shrubs. Flooding or severe scarring will not occur as a result of grading operations and will be assured by conditions of approval requiring all operations to the satisfaction of the City Engineer. Conditions included within Southeast San Diego Planned District/Resource Protection Ordinance Permit No. 96-0338 require the timely planting of all slopes to prevent erosion and to provide additional slope stability. The design of the proposed project will avoid and preclude adverse impacts on adjacent downstream properties where sensitive biological resources may be present.

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

The site has been confirmed by City staff to be outside the City of San Diego Multiple Species Conservation Program (MSCP) Subarea Plan. The proposed project would not impact any critical biological resource area or corridor targeted for preservation under the City's MSCP Subarea Plan. The site is not designated for preservation and is not adjacent to or connecting as a corridor to other environmentally sensitive areas. Mitigation proposed for impacts to sensitive vegetation and habitat will occur through the creation and restoration of a permanent preservation of offsite mitigation lands as required in the Mitigation Monitoring and Reporting Program adopted for the project. The project proposes to mitigate upland impacts to coastal sage scrub (MSCP Tier II Habitat), the potential habitat of the threatened California gnatcatcher, and a host of other sensitive species. The applicant also proposes to mitigate upland impacts to non-native grassland (MSCP Tier IIIB Habitat), which provides forage and support habitat for many sensitive raptor species. The proposed mitigation would be a 2:1 purchase of Tier II and Tier IIIB habitat off-site at a mitigation bank located within a City MHPA. The proposed mitigation site is in the Cornerstone Lands mitigation bank.

The proposed project is consistent with the City's MSCP program by developing outside of the MHPA and fully mitigating upland habitat impact in accordance with the City's Biology Guidelines within the MHPA. Therefore, the nature and extent of mitigation required for the Imperial Marketplace Project is reasonably related to, and calculated to alleviate, negative upland habitat impacts created by the proposed development.

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 has identified significant impacts to biological resources. Mitigation has been identified at appropriate ratios as required to offset the impacts to biologically sensitive resources. 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 and enforced through conditions of approval will reduce potential adverse impacts resulting from development of the site. 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. The impacts from developing the site would be fully mitigated by the proposed mitigation plan.

DEVIATIONS FROM SENSITIVE BIOLOGICAL RESOURCES REGULATIONS FINDINGS:

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

The 42.01 acre site is located within the Southeast San Diego Community Plan area and designated for commercial or residential uses. The site is located between Imperial Avenue and Ocean View Boulevard, between 42nd and 45th Streets. The project will be required to construct Street "A" between Imperial Avenue and Ocean View Boulevard which is identified in the community plan as a circulation element road. A wetlands delineation indicates that 0.33 acres of Resource Protection Ordinance (RPO) defined Wetlands and 1.65 acres of Natural Flood Channel (under the United States Army Corps of Engineers jurisdiction) is located within the existing channel of South Chollas Creek and will be disturbed by the project. Any development of this site would be required to construct a similar public street crossing South Chollas Creek and would also include necessary flood control improvements. Federal Emergency Management Agency requirements, as a direct result of the construction of Street "A," require South Chollas Creek in this area to be channelized to address Federal flood control requirements. These requirements result in direct impacts to the wetlands and the natural flood channel. Only by a "no project" alternative is it possible to avoid impacts to these resources. Impacts to the 0.33 acres of wetlands will be mitigated within the western portion of Tecolote Canyon Natural Park pursuant to a Mitigation Monitoring and Reporting Program plan to replace the function and habitat values. A minimum 0.66 acres of Wetland creation and 2.71 acres of Natural Flood Channel enhancement and restoration would occur to achieve no net loss of wetlands functions or value.

Deviations to the development regulations of the Resource Protection Ordinance, as provided for within the RPO, allow the applicant to develop the site in a manner consistent with the intent of the community plan and zoning for the property.

With the community plan requirement for a circulation element road and the existing need for a public road between Imperial Avenue and Ocean View Boulevard, deletion of the road from the community plan to avoid the impacts to the wetlands is not acceptable. Any alternative development plan at this site would have similar direct impacts to the wetlands. Due to the presence of South Chollas Creek, it is only through the deviation process that the development is consistent with the land use policies of the community plan and will allow substantial benefits of the project to accrue to the community.

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.

Avoidance of the 0.33 acre of Wetlands and 2.71 acres of Natural Flood Channel would require elimination of a circulation element road from the Progress Guide and General Plan. This alternative would result in a negative impact to the community-wide circulation in that there are no north-south circulation connections available in the area to address the circulation needs of the community. The impact at this site on the wetland area is considered to be the minimum necessary to allow development of the proposed project and would be mitigated in function and value in an acceptable location to assure the success criteria. Avoidance of the 0.33 acre of Wetland cannot be achieved without a no project alternative. Therefore, the disturbance is the minimum necessary to afford relief from these special circumstances to allow development of the site.

The impacts to wetlands will be mitigated offsite in Tecolote Canyon Natural Park. Tecolote Canyon Natural Park is part of an important open space system within the City of San Diego. The existing wetlands on the project site are dominated by exotic species. The quality of the habitat to be created in the mitigation area would exceed that of the habitat to be impacted on the project site. The proposed enhancements within Tecolote Canyon Natural Park required for the implementation of the proposed project as described in the Mitigation Monitoring and Reporting Program, Revegetation Plan, represent a valuable contribution to the City.

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 Southeast San Diego Planned District/Resource Protection Ordinance Permit No. 96-0338 is granted, subject to the additional condition set out below, to the Southeastern Economic Development Corporation, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

That the Applicant's proposed alternative identified in the Report to the Planning Commission, Report No. P-99-129, is approved so draft Tentative Map Conditions 23, 24, and 25 be removed therefrom and placed in the permit as conditions 38, 39, and 40, and allow SEDC to enter into a memorandum of understanding without a secured bond with the City regarding the costs of mitigating the significant cumulative traffic impacts of the project.

APPROVED: CASEY GWINN, City Attorney

By



Richard A. Duvernay
Deputy City Attorney

RAD:lc

12/01/99

Or.Dept:Clerk

R-2000-582

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Reviewed by John Fisher

**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

Southeast San Diego Planned District/Resource Protection Ordinance
Permit No. 96-0338

IMPERIAL MARKETPLACE
City Council

This Permit is granted by the Council of The City of San Diego to Southeastern Economic Development Corporation, a California Corporation, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 101.0462 and 103.1700. The 42.01 acre site is located between Ocean View Boulevard and Imperial Avenue, west of 45th and east of San Pasqual Street in the SF-5000/CT-2 zone of the Southeast San Diego Community Plan. The project site is legally described as Lot 30, Map No. 9568; Lot 31, Map No. 9615; Lot 151, Map No. 9779; Lots 152 and 195, Map No. 9786; and all of North Creek, Unit 2, Map No. 12030.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to subdivide and develop a 42.01 acre site with a community shopping center of approximately 243, 427 square feet of retail space including a multiplex movie theater, home improvement center, and other retail uses. The project will also provide flood control improvements to South Los Chollas Creek; site landscaping to create a park-like interface between the retail center and South Los Chollas Creek; dedication and improvement of a north/south street between Imperial Avenue and Ocean View Boulevard; improvements to both Imperial Avenue and Ocean View Boulevard; and other on site improvements described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated September 14, 1999, on file in the Office of Planning and Development Review. The facility shall include:

- a. A total of eight buildings; Building A (a theater) of approximately 46,985 square feet; Building B of approximately 6,000 square feet; Building C of approximately 6,800 square feet; Building D of approximately 30,187 square feet; Building E of approximately 107,920 square feet with a garden center of approximately 23,920 square feet; a restaurant (1) of approximately 6,000 square feet; a restaurant (2) of approximately 4,500 square feet; a restaurant (3) of approximately 4,500 square feet;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. A total of 1,194 spaces with 34 disabled spaces off-street parking facilities, at the following minimum rates: retail commercial uses at 2.5/1000 totaling 437

spaces, restaurant/food uses at 5/1000 totaling 75 spaces, theater at 1/3.3 seats totaling 682 spaces;

- d. A passive pedestrian trail and park-like area with lighting, bench seating, bollard lighting, and landscaping between the retail center and South Los Chollas Creek; and
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the Permit to 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. 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. 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.

8. 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.

9. The Southeast San Diego Planned District/Resource Protection Ordinance Permit shall comply with the conditions of the final map for Tentative Map No. 96-0338.

10. 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 September 14, 1999, on file in the Office of Planning and Development Review. All building plans shall satisfy the requirements of the Southeast San Diego Planned District for articulation and offsetting planes as described in M.C. section 103.1707.M3.a and b. No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

11. 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.

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

13. This permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved Exhibits "A," dated September 14, 1999, on file in the Office of Planning and Development Review.

14. Prior to the issuance of any building permits, provide building plans which indicate building address numbers, visible and legible from the street or road fronting the property in accordance with Uniform Fire Code section 901.4.4.

15. Prior to the issuance of any building permits, plans for a fast food restaurant shall indicate the ordering system shall be state of the art exterior speaker system. After ten (10) P.M., customers shall drive up to the window to place orders and the speaker system shall not be used. Hours of operation for the speaker system shall be from seven (7) A.M. to eleven (11) P.M. on all weekdays, and from seven (7) A.M. to midnight on weekends. No drive through business operation from midnight to seven (7) A.M.

16. Prior to the issuance of any building permits, plans shall indicate additional architectural design features for buildings located on Pads "C" and "D" to promote visibility and activity.

17. Prior to the issuance of any occupancy permits, provide fire access roadway signs or red curbs in accordance with Bureau of Fire, Life Safety Policy A-96-1.

18. Prior to the issuance of any occupancy permits, the Owner/Permittee shall conform to Municipal Code requirements of "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the Owner/Permittee shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

19. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in Environmental Impact Report, LDR No. 96-0338, satisfactory to the City Manager and the City Engineer. Prior to issuance of any building permits, all mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Noise
Public Services/Facilities
Neighborhood Character/Aesthetics

20. The Owner/Permittee shall comply with the following requirements as recommended in the project noise study:

1. All delivery truck traffic to the site shall be prohibited between the hours of ten (10) P.M. and six (6) A.M.
2. All refuse or recycling pick-up shall be prohibited between the hours of ten (10) P.M. and six (6) A.M. on weekdays, no pick-ups prior to eight (8) A.M. on Saturdays, and no pick-ups prior to nine (9) A.M. on Sundays.
3. All parking lot sweeping shall be prohibited between the hours of ten (10) P.M. and five-thirty (5:30) A.M. all days of the week.
4. All fast-food services shall be limited to drive-through only service after midnight.

21. At the project build-out, no fewer than 1,194 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A," dated September 14, 1999, on file in the Office of Planning and Development Review. Parking spaces shall comply at all times with the Municipal Code and shall not be converted for any other use unless otherwise authorized by the City Manager. Parking spaces shall be required at the following minimum rates: retail commercial uses at 2.5 per 1000 square feet; restaurant/food uses at 5 per 1000 square feet; and theater at 1 per 3.3 seats.

22. There shall be compliance with the regulations of the underlying zone(s). No variances have been approved with the approval of the 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.

23. 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.

24. Prior to the issuance of any building permits, all signage associated with this development shall be consistent with criteria established by a Sign Program. The applicant shall submit for review and approval, a Sign Program to the Sign Code Administrator in accordance with the City-Wide Sign Regulations.

25. Prior to the issuance of any building permits, complete outdoor lighting information shall be submitted to the Planning and Development Review, Land Development Review Division, for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and a point by point plot to include all areas within the private property and to extend a minimum of fifty (50) feet beyond the property line, construction details as necessary to direct installation of the outdoor lighting system, manufacturers name, visors, prisms, lenses and reflectors and a lighting plan locating each fixture in plan view and a legend. The outdoor lighting

system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.

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

26. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

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

28. 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.

29. 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 architecturally integrated structure whose top and sides may include grillwork, louvers and latticework.

30. No merchandise, material or equipment shall be stored on the roof of any building.

31. 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."

32. 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 September 14, 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.

33. 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. All plans shall be in substantial conformance to Exhibit "A," dated September 14, 1999, on file in the Office of Planning and Development Review and all other applicable conditions of related permits.

34. 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 Owner/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.

35. Prior to issuance of any Certificate of Occupancy for each building, it shall be the responsibility of the Owner/Permittee to install all required landscaping for the respective lot; 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.

36. 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 Owner/Permittee, or subsequent owner, shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

37. 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 Owner/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.

38. The Redevelopment Agency of The City of San Diego shall provide a fair share contribution of 68% of total costs to the future widening of Oceanview Boulevard between 32nd Street and 40th Street to a four lane Major Street, satisfactory to the City Engineer. This future contribution shall be assured through a memorandum of understanding between the Redevelopment Agency and The City of San Diego. The agreement will cover the terms and conditions of funding the Redevelopment Agency's fair share contribution and shall be in place prior to the issuance of the Certificate of Occupancy. The future contribution shall be due and payable at such time that the City is ready to commence work on the subject improvement.

39. The Redevelopment Agency of The City of San Diego shall provide a fair share contribution of 46% of total costs to the future widening of Imperial Avenue between 32nd Street and 40th Street to a four lane Major Street, satisfactory to the City Engineer. This future contribution shall be assured through a memorandum of

understanding between the Redevelopment Agency and The City of San Diego. The agreement will cover the terms and conditions of funding the Redevelopment Agency's fair share contribution and shall be in place prior to the issuance of the Certificate of Occupancy. The future contribution shall be due and payable at such time that the City is ready to commence work on the subject improvement.

40. The Redevelopment Agency of The City of San Diego shall provide a fair share contribution of 47% of total costs to the future widening of the I-805 southbound off ramp at its intersection with Imperial Avenue to provide two left-turn lanes and a single right-turn lane, satisfactory to the City Engineer. This future contribution shall be assured through a memorandum of understanding between the Redevelopment Agency and The City of San Diego. The agreement will cover the terms and conditions of funding the Redevelopment Agency's fair share contribution and shall be in place prior to the issuance of the Certificate of Occupancy. The future contribution shall be due and payable at such time that the City is ready to commence work on the subject improvement.

FOR INFORMATION:

- Development on this site may be subject to impact fees, payable prior to building permit issuance, as established by the City Council.

APPROVED by the Council of The City of San Diego on September 14, 1999, by Resolution No. R-292172.

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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:

**SOUTHEASTERN ECONOMIC
DEVELOPMENT CORPORATION,
a California corporation
Owner/Permittee**

By _____

By _____

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

11/30/99

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