

RESOLUTION NUMBER R-292178

ADOPTED ON SEPTEMBER 14, 1999

WHEREAS, D.R. Horton, Owner/Permittee, filed an application with The City of San Diego for a Planned Residential Development/Resource Protection Ordinance [PRD/RPO] Permit to construct 320 single-family residences and 112 multi-family units for the Torrey Del Mar project, located on both sides of the extension of Carmel Valley Road (formally Black Mountain Road), east of Via Abertura, and legally described as portions of Parcel Map Nos. 9371, 12027, 14768, and 8133, in the Torrey Highlands Subarea IV Plan area, in the A-1-10,000 (proposed R-1-8000, R-1-5000, R-1500, CN and OS zones); and

WHEREAS, on September 2, 1999, the Planning Commission of The City of San Diego considered PRD/RPO Permit No. 98-0250, 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 PRD/RPO Permit No. 98-0250:

**I. PLANNED RESIDENTIAL DEVELOPMENT [PRD] FINDINGS:**

**A. The proposed use will fulfill a community need and will not adversely affect the City's Progress Guide and General Plan or the adopted community plan.**

The subject 176-acre site is within the Torrey Highlands Subarea IV Plan area for North City Future Urbanizing Area Subarea IV and designated for VLD Very Low Density (less than 1 dwelling unit per gross acre) and LD Low Density (2-5 dwelling units per gross acre) residential

use. Table 4-3 of the Subarea Plan labels the subject site as Parcels B, M, N, O, and U for the development of a maximum of 432 residential-dwelling units. The proposed project of 432-dwelling units will provide a mixture of residential units on lots compatible in size to the adjacent neighborhood. The proposed 320 single-family residential dwelling units and the 112 multiple-family (affordable) units is consistent with the City of San Diego General Plan and the adopted Torrey Highlands Subarea IV Plan and will meet the community need for residential housing as designated for Parcels B, M, N, O, and U. Design techniques, including single-loaded streets adjacent to open space areas, expanded parkways to provide additional landscaping and screening, homes designed with front porches and recessed garages are part of the project features.

**B. The proposed use 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 properties in the vicinity.**

The development of these parcels as a 432-unit residential subdivision, is subject to a concurrent Planned Residential Development and Resource Protection Ordinance Permit and rezone from A1-10 to R1-8000, R1-5000, R 1500, CN, OS. The development is consistent to the adopted Torrey Highlands Subarea IV Plan and to other adjacent properties within the Subarea Plan designated for residential use. No deviations from the underlying proposed zones are requested and the development of the 320 single-family residences and 112 multi-family dwellings will not be detrimental to persons or property within the vicinity or area of the subject property.

**C. The proposed use will fully comply with the relevant regulations of the San Diego Municipal Code in effect for this site.**

The development of 320 single-family residential units and 112 multi-family dwellings on this 176-acre site is determined to be in compliance with the General and Torrey Highlands Subarea IV Plans of the City of San Diego, the Planned Residential Development Ordinance Purpose and Intent, and the requirements of the State Subdivision Map Act, and local subdivision and rezoning regulations.

**II. RESOURCE PROTECTION ORDINANCE/ALTERNATIVE COMPLIANCE PROVISION FOR SUBSTANTIAL CONFORMANCE DETERMINATION FINDINGS:**

The subdivision of this 176-acre site into 320 single-family residential lots and 112 multiple-family units is being designed according to the provisions of the adopted Torrey Highlands Subarea IV Plan. Section 2.2 of the Subarea IV Plan (Resource Protection Ordinance) references City Council Policy 600-40 as to how RPO analysis was formulated for the entire Subarea IV Plan area. The Plan specifies that, "if future project or permit applications within Torrey Highlands are found to be consistent with the Torrey Highlands Subarea Plan, then future RPO permits may be approved using the substantial conformity determination referenced in the alternative compliance subsection of the RPO." The project would grade 61 percent of the site for the subdivision of 344 lots compatible with existing residential development to the east. The

proposed subdivision and development of 432 residential units as indicated on "Exhibit A," dated September 14, 1999, on file in the Office of the Planning and Development Review, is consistent with the RPO, MSCP (Multiple Species Conservation Program), and Open Space provisions of the plan. The project is therefore sited and designed to minimize adverse impacts to environmentally-sensitive areas.

### **III. BRUSH MANAGEMENT FINDINGS:**

**A. The proposed brush management program, to the extent feasible, will not adversely affect floodplains, biologically-sensitive lands, hillsides, significant prehistoric sites and resources, and wetlands as defined in the Resource Protection Ordinance, San Diego Municipal Code Section 101.0462.**

The proposed Brush Management Program, by providing the brush management zones of the Landscape Regulation in the Land Development Code as referenced by the Biology Guidelines adopted by the City Council under Ordinance No. O-18451 and additional guidelines of the Landscape Technical Manual as shown on Exhibit "A," dated September 14, 1999, on file in the Office of the Planning and Development Review, will modify the existing vegetation to the least practical extent while still providing the necessary fire protection to persons and property as required by the Uniform Fire Code, appendix IIA. Plant materials in Brush Management Zone Two will be selected to visually blend with the existing hillside vegetation and no invasive species shall be used.

**B. The proposed brush management program, to the extent feasible, will minimize the alterations of vegetation and will not result in undue risks from erosional forces.**

The proposed Brush Management Program, by using Alternative Compliance Provision (Section 6.2 of the Landscape Technical Manual) and provisions of the Land Development Code Landscape Section 142.0412 (Brush Management), Ordinance No. O-18451, as shown on Exhibit "A," dated September 14, 1999, on file in the Office of the Planning and Development Review, will modify the existing vegetation to the least practical extent while still providing the necessary fire protection to persons and property as required by the Uniform Fire Code. All new plantings on slopes will conform to the Revegetation Standards of the Landscape Technical Manual, Section Seven, and incorporate low precipitation irrigation systems to minimize runoff.

### **IV. BRUSH MANAGEMENT ALTERNATIVE COMPLIANCE FINDINGS:**

**A. The proposed brush management program will meet the purpose and intent of the Uniform Fire Code.**

The proposed development complies with the purpose and intent by providing an effective fire break while minimizing the potential for soil erosion by incorporating Zone Reduction and the Alternative Compliance provisions consistent with Landscape Technical Manual, Section Seven,

and brush management zones of the Land Development Code Section 142.0412, Ordinance No. O-18451.

**B. The proposed brush management program, 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.**

Requirements incorporated into the permit provide an effective fire break and ensure minimal risk of erosional forces affecting hillsides by providing revegetation to all slopes per the Landscape Technical Manual, Section Seven.

**C. The provision as outlined in section 6.6-2 of the document titled City of San Diego Landscape Technical Manual (on file in the Office of the City Clerk as Document No. RR-274506) shall be satisfied and the proposed development shall not violate other fire resistive features as required by the Fire Chief.**

The Architectural Features (Section 6.6-2 of the Landscape Technical Manual and Section 142.0412 of the Land Development Code, Ordinance No. O-18451) of the Landscape Technical Manual have been incorporated into the project per Exhibit "A," dated September 14, 1999, on file in the Office of the Planning and Development Review. No other fire resistive features are required by the Fire Chief.

**D. Compliance with the provision of this section in addition to any other applicable adopted plans or ordinances would preclude any reasonable development on the site.**

The site design complies with the Torrey Highlands Subarea Plan. However, site constraints, including the Multiple Habitat Planning Area [MHPA] of the Multiple Species Conservation Plan [MSCP], preclude literal compliance with the provisions of the Uniform Fire Code without encroachment into sensitive habitat. Therefore, the alternative compliance provision of the Landscape Technical Manual has been implemented to allow for reasonable development of this site while providing the necessary fire protection as required by the Uniform Fire Code on this site. An alternative compliance Brush Management Program is provided which supports the purpose and intent of other applicable adopted plans and ordinances including the Biology Guidelines of Ordinance No. O-18451, which references the brush management requirements of Section 142.0412 of the Land Development Code.

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

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Planned Residential Development/Resource Protection Ordinance Permit

No. 98-0250 is granted, subject to the additional conditions listed below, to D.R. Horton San Diego Holding, Inc., Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

1. That Condition No. 11 shall be changed for Unit 1, north of Carmel Valley Road, to allow for a segment of the development to be a gated community which staff finds consistent with Council Policy 600-42.

2. That the design of the pedestrian connection between the affordable housing site and retail buildings shall be changed as shown on the handout distributed to the City Council (see attached Attachment A hereto) and concurred with by staff. This change has been incorporated into the PRD/RPO Permit, Exhibit A, dated September 14, 1999, on file in the Office of Planning and Development Review.

APPROVED: CASEY GWINN, City Attorney

By



Richard A. Duvernay  
Deputy City Attorney

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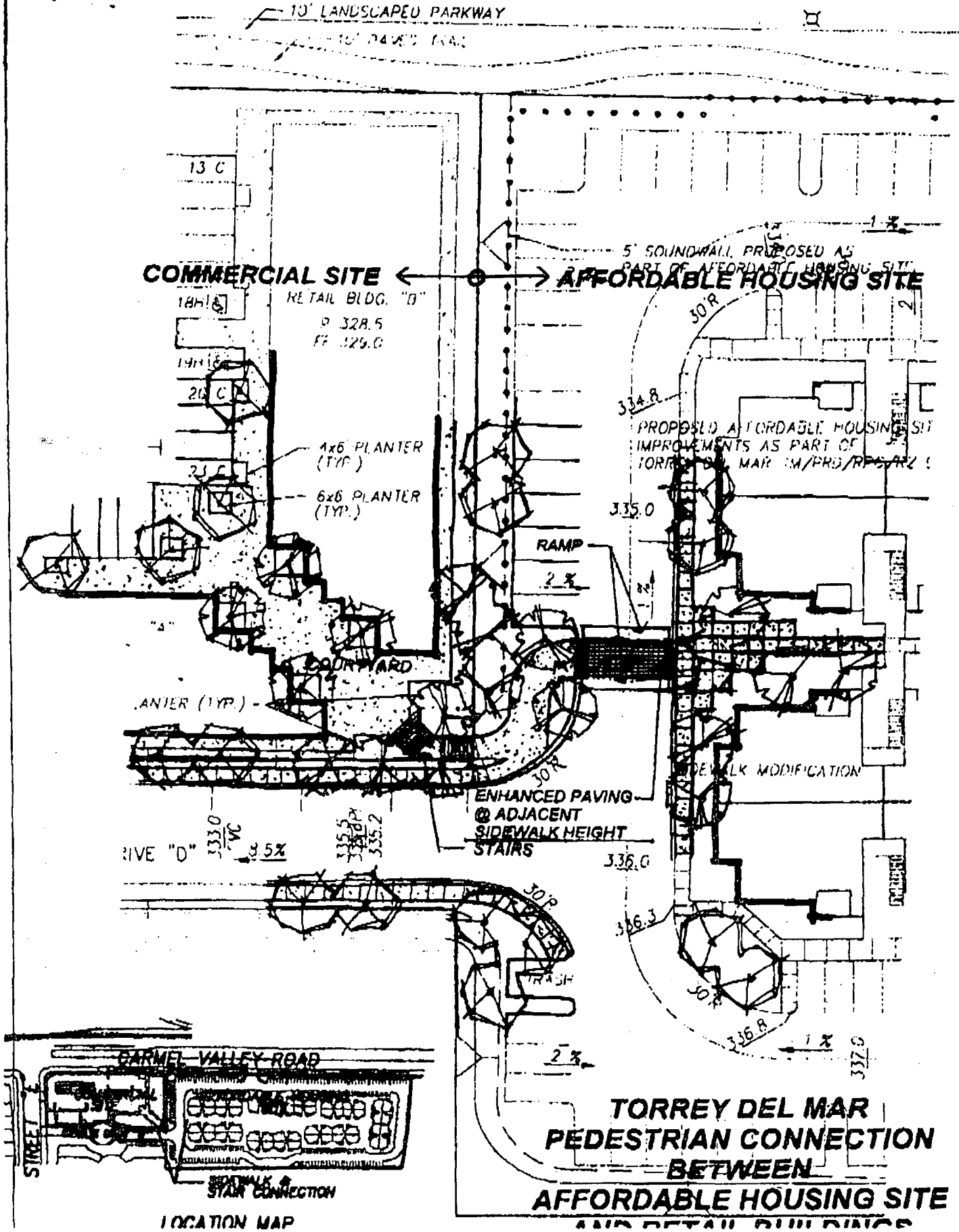
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Or.Dept:Clerk

R-2000-461

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Reviewed by Robert Gentles



**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
PLANNING AND DEVELOPMENT REVIEW  
PERMIT INTAKE, MAIL STATION 501

**AND WHEN RECORDED MAIL TO**  
CITY CLERK  
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PLANNED RESIDENTIAL DEVELOPMENT [PRD] AND  
RESOURCE PROTECTION ORDINANCE [RPO] PERMIT NO. 98-0250  
TORREY DEL MAR**

**CITY COUNCIL**

This Permit is granted by the Council of The City of San Diego to D. R. Horton San Diego Holding Inc., Owner and Permittee, pursuant to San Diego Municipal Code [SDMC] sections 101.091, 101.0462, and 111.0510. The 176-acre site is located on both sides of Carmel Valley Road, east of Via Albertura in the A1-10 (proposed R1-8000, R1-5000, R-1500) zones of the Torrey Highlands Subarea IV Plan. The project site is legally described as Portions of Parcel Map Nos. 9371, 12027, 14768, and 8133 within Sections 13, Township 14 South, Range 3 West, San Bernardino Base Meridian.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to subdivide and construct a 320-unit, single-family detached development, a 112-unit affordable-housing complex, 21 miscellaneous open-space lots through the PRD Ordinance 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. Three-hundred and twenty (320) detached, single-family residential lots with ten floor plans and elevations containing between 2,100 to 6,100 square feet; and
- b. Security gates for lots 1-52; and
- c. One-hundred twelve (112) affordable units; and
- d. Two commercial lots, and one day care center lot; and
- e. Twenty-one miscellaneous open-space lots; and
- f. Landscaping (planting, irrigation, and landscape-related improvements); and
- g. Off-street parking facilities; 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 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. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical, and plumbing codes and State law requiring access for disabled people may be required.
8. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated September 14, 1999, on file in the Office of Planning and Development Review. No substantial 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. The Planned Residential Development and Resource Protection Ordinance Permit shall comply with the conditions of the final map of Torrey Del Mar, Tentative Map No. 98-0250.

11. The Unit 1 residential development, north of Carmel Valley Road, will be served by a system of privately maintained, non-dedicated private driveways, constructed in a manner satisfactory to the City Engineer.

12. All projects shall be in compliance with Maximum Height of a Building or Structure and Procedural Requirements for Determination of Structure Height of the Municipal Code.

13. All projects shall be in compliance with Topographical Survey Requirements of the Municipal Code 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.

14. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in Mitigated Negative Declaration No. 98-0250 (LDR No. 98-0250), to the satisfaction of the City Manager and the City Engineer. Prior to the issuance of the first grading permit and/or recordation of the first final map, all mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

a. Noise

- b. Water Conservation
- c. Transportation/Circulation
- d. Public Services/Utilities.
- e. Land Use/MHPA
- f. Biological Resources
- g. Historical Resources

15. 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.

**PLANNING/DESIGN REQUIREMENTS:**

16. No fewer than 224-off-street parking spaces shall be maintained on the multiple-family lot at all times in the approximate locations shown on the approved Exhibits "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.

17. 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.

18. 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.

19. 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 regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.
20. 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.
21. No building additions, including patio covers, shall be permitted unless approved by the homeowners association and the Planning and Development Review Director. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.
22. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
23. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
24. Mechanical equipment must be housed within the roof structure and not visible to the exterior.
25. Trash enclosures shall be provided for the multi-family units in accordance to the provisions of the Municipal Code.
26. Signage shall be consistent with the Citywide sign provisions.
27. The pathway located on the SR56 side of the sound wall shall be relocated to the subdivision side of the wall. The design and location of the relocated pathway shall be subject to the approval of the City Manager.
28. Prior to the development of Lots 323 and 324, the applicant shall be required to have an approved Planned Commercial Development Permit in accordance with the provisions of the Torrey Highlands Subarea Plan.

**LANDSCAPE REQUIREMENTS:**

29. 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.
30. 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.

31. 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.

32. Prior to issuance of any building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated September 14, 1999, on file in the Office of Planning and Development Review. No substantial change, modification, or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

33. Prior to issuance of any 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 September 14, 1999, on file in the Office of Planning and Development Review and all other applicable conditions of related permits.

**BRUSH MANAGEMENT PROGRAM:**

34. The Permittee shall implement the following requirements in accordance with the Modified Brush Management Program shown on Exhibit "A," Brush Management Program/Landscape Concept Plan, dated September 14, 1999, on file in the Office of Planning and Development Review:

- a. Prior to the issuance of any grading permits, a complete set of brush management construction documents shall be submitted for approval to the City Manager and the Fire Chief. The construction documents shall be in substantial conformance with Exhibit "A," dated September 14, 1999, on file in the Office of Planning and Development Review, and shall comply with the Uniform Fire Code (SDMC § 55.0889.0201), the alternative compliance provision of Section Six of the Landscape Technical Manual (Document No. RR-274506) on file at the Office of the City Clerk and the Land Development Code Section 142.9412 (Ordinance No. O-18451).
- b. The Modified Brush Management Program, using the Alternative Compliance provision, shall consist of two zones consistent with the Brush Management regulations of the Land Development Code Section 142.0412 as follows:

<u>Lot Numbers</u>	<u>Zone One</u>	<u>Zone Two</u>
59 to 61, 63 to 77, 181 to 202 142, 137, 138, 136, 130, and 131	35 feet	50 feet

- c. The construction documents shall conform to the architectural features as described in Section 6.6-2 of the Landscape Technical Manual.
  - d. Within Zone One combustible accessory structures with less than a one-hour fire rating are not permitted, including but not limited to: wood decks, trellises, gazebos, etc. Non-combustible accessory structures and/or combustible accessory structures with a minimum fire rating of one hour or more, may be approved within the designated Zone One area subject to approval by the Fire Chief and the City Manager.
  - e. All requirements for fire resistive construction and other architectural features shall conform to the applicable City and Regional Building Code Standards. The Fire Chief may consider deviations from these conditions or may require additional conditions at the time of final inspection, if it is determined an eminent health and safety risk still exist.
  - f. Provide the following note on the Brush Management Construction documents: "It shall be the responsibility of the Permittee to schedule a pre-construction meeting on site with the contractor and the Planning and Development Review Department to discuss and outline the implementation of the Brush Management Program."
35. Prior to issuance of any Certificate of Occupancy for any building, the approved Brush Management Program shall be implemented.
36. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Technical Manual, Section Six.

**AFFORDABLE HOUSING:**

37. Affordable Housing Requirements: Prior to the filing of the first final map, subdivider shall comply with the requirements of the Torrey Highlands Subarea Plan for affordable housing (the "Affordable Housing Requirements") by satisfaction of the requirements of subparagraph a. below:
- a. Subdivider shall assure the construction and occupation of an "Affordable Housing Project" consisting of one hundred twelve (112) units to be constructed on Lot 322, as shown on the Tentative Map No. 98-0250. Of this total, fifty-four (54) affordable units shall satisfy the subdivider's on-site requirement for affordable housing related to the Tentative Map, and the surplus of fifty-eight (58) affordable units may be available to satisfy other Torrey Highlands subdividers' affordable housing requirements within this Subdivider's Tentative Map boundaries. However, if the surplus units are not used in satisfaction of other subdividers' affordable housing requirements, then the subdivider may utilize fifty-two (52) of the surplus units as market rate, and shall utilize eight (8) of the surplus units

as affordable units. Subdivider shall execute an agreement (the "Affordable Housing Agreement"), subject to the approval of the Executive Director of the Housing Authority of the City of San Diego, or designee, and the City Manager of the City of San Diego, or designee, addressing the following issues:

- (1) Performance Security for the construction of (the "Affordable Housing Project") and dedication of land (the "Affordable Housing Site") for the construction of the Affordable Units (the "Affordable Units") onsite, in the form of bond(s), letter(s) of credit, lien(s) and/or other forms of security acceptable to the Executive Director of the Housing Authority of the City of San Diego, or designee ("Executive Director");
- (2) Approval of the timing of the construction and occupancy of the Affordable Housing Project, acceptable to the Executive Director, provided that the following timetable is incorporated into the Affordable Housing Agreement:
  - (a) Issuance of building permits for the Affordable Project shall occur on or before the earlier of:
    - i. the issuance of building permits for construction of the 134th market rate dwelling unit (number of units which represents 50 percent of market rate units); or, (   date which is eighteen (18) months after the filing of the first final map   );
    - ii. in no event shall the issuance of building permits for the construction of the 134th market rate unit occur until building permits are issued for construction of at least fifty-four (54) affordable units are authorized by the City and are obtained by the subdivider. Further, if individual parcels are sold initially by subdivider without first obtaining building permits for construction of market rate units, every such parcel sold shall nonetheless be included with the total number of the building permit issued, in determining when the issuance of the building permit occurs for the 134th and 201st or greater market rate unit.
  - (b) Completion of construction of the Affordable Project shall occur upon the earlier of:
    - i. Twelve (12) months after the issuance of building permit for the Affordable Project as referenced in Paragraph (2)(a) hereof; or
    - ii. (   date   ) (Date shall be two and one-half years after the filing of the first final map).

Further, the issuance of building permits for the construction of the 201st market rate unit (number of units which represents seventy-five percent (75%) of market rate units) shall not occur until the completion of at least fifty-four (54) affordable units is authorized by the City.

- (c) Occupancy of the Affordable Project shall occur not later than one-hundred eighty (180) days after the completion of construction as referenced in Paragraph (2)(b) above.
  - (d) Or "good cause" shown to the satisfaction of the Executive Director, the dates referenced herein may be extended for one or more period(s) of up to twelve (12) months, each. Good cause shall include, but not be limited to, Acts of God, labor strikes, war, riots, etc., shall be determined by the Executive Director, in her sole discretion.
- (3) A Declaration of Covenants, Conditions, and Restrictions (the "Declaration"), restricting the occupancy and affordability of the Affordable Project for a period of fifty-five (55) years from the date of completion of the Affordable Project, which Declaration shall incorporate the Affordable Housing Agreement by reference, shall be recorded against the Affordable Housing Site, in a first priority position. All Affordable Units shall be for occupancy by and at rates affordable to, families earning no more than sixty-five percent (65%) of the Area Median Income, as adjusted for family size. However, in the case of affordable rental units, in which provisions of the State Density Bonus Statute ("Government Code Section 65915") applies, rental rates shall not exceed sixty percent (60%) of the Area Median Income, as adjusted for assumed family size and utilities.
- (4) Additional security for the performance by the subdivider of the Affordable Housing Requirements shall be provided by a deed of trust in favor of the Executive Director, recorded against the Affordable Housing Site, in second lien priority, (junior only to the Declaration) assuring the timely performance of the Agreement referenced in Paragraph a. hereof. The deed(s) of trust in favor of the Housing Authority may be subordinated to construction deed(s) of trust and/or permanent financing deed(s) of trust in favor of institutional lenders, as approved by the Executive Director, in her/his sole discretion, if deemed essential to construction and/or operation of the Affordable Project, upon such terms and conditions as she/he may impose.
- (5) Such other and further conditions as may be reasonably required by the Executive Director to assure satisfaction of the Affordable Housing Requirements, and such modification of existing condition(s), as may be granted by the Executive Director in her/his sole discretion.

- (6) Subdivider, and their successors, heirs, and assigns shall execute such other and further documents and shall perform such acts, as shall be requested by the Executive Director and the City Manager and as may, from time to time, be required to effectuate the provisions of Affordable Housing as contemplated by these condition(s) of approval.
- (7) In addition to requirements a(1) through a(6), subdivider shall pay an in-lieu fee for fifty-two (52) very-low density units, or enter into an In-Lieu Fee Agreement secured by bond or other security, as approved by Executive Director, prior to filing of first final map.

OR

As an alternative to satisfying the requirements of subparagraph a above, the subdivider shall, prior to the filing of the first final map, comply with the requirements of subparagraph b below:

- b. The approval by the Executive Director, or designee, and the City Manager, or designee, of the dedication (that is, the irrevocable setting aside of land for affordable housing purposes) of developable land within the subarea and "Affordable Housing Plan(s)" that address, provide for and assure the construction and occupancy of Affordable Units within the subarea on common site(s). Each Affordable Housing Plan must address the following issues concerning "Affordable Housing" to the satisfaction of the Executive Director and the City Manager, or designee:
  - (1) Siting, design, unit mix, appearance, architectural, and floor plans, of the Affordable Units, as referenced on City approved tentative maps and City approved PRD exhibits;
  - (2) Security for timely performance by the Subdivider of the approved Affordable Housing Plan(s) and Affordable Housing Agreement(s);
  - (3) Execution and recordation of enforceable agreement(s), including the Affordable Housing Agreement, setting forth the requirements and timing of construction and occupancy of the Affordable Housing as referenced in the Affordable Housing Plan(s);
  - (4) Phasing of the construction and occupancy of the Affordable Units;
  - (5) Recordation of a Declaration of Covenants, Conditions and Restrictions, as approved by the Executive Director, assuring affordability and occupancy of the Affordable Units for a period of fifty-five (55) years from the date of completion of construction of the Affordable Units to families earning not more than sixty-five percent (65%) of Area Median Income and at rates affordable to these families, as adjusted for family size. However, in the case of affordable rental units, in which provisions of the State Density



Bonus Statute applies, rental rates shall not exceed sixty percent (60%) of the Area Median Income, as adjusted for assumed family size and utilities.

- (6) Security in the form of a lien with second priority, junior only to the Declaration, assuring dedication of the Affordable Housing Site and construction of the Affordable Units in a timely fashion, as set forth in the phasing element(s) of the Affordable Housing Plan(s). Subordination of the second lien priority security mentioned herein may be subordinated to construction and/or permanent financing deed(s) of trust in favor of institutional lender(s), as approved by the Executive Director, and as referenced in Paragraph a(4), hereof; and
- (7) Such other and further conditions as may be reasonably required by the Executive Director to assure satisfaction of the Affordable Housing Requirements, and such modification(s) of existing condition(s), as may be granted by the Executive Director in her/his sole discretion.
- (8) Subdivider, and their successors, heirs and assigns shall execute such other and further documents and shall perform such acts, as shall be requested by the Executive Director and the City Manager and as may, from time to time, be required to effectuate the provisions of Affordable Housing as contemplated by these condition(s) of approval.
- (9) In addition to requirements b(1) through b(8), subdivider shall pay an in-lieu fee for fifty-two (52)-very-low density units, or enter into an In-Lieu Fee Agreement secured by bond or other security, as approved by Executive Director, prior to filing of first final map.

38. The Torrey Del Mar Affordable Housing Program is attached to this PRD/RPO Permit for reference as Exhibit B.

APPROVED by the Council of The City of San Diego on September 14, 1999, by Resolution No. R-292178.

AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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**The undersigned Permittee**, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

**D.R. HORTON SAN DIEGO HOLDING INC.**  
Owner/Permittee

By \_\_\_\_\_

By \_\_\_\_\_

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

10/27/99

LADUVERNA\PERMITS\98-0250- rev.WPD

## TORREY DEL MAR AFFORDABLE HOUSING PROGRAM

AUGUST 16, 1999

### **The Project:**

The proposed Torrey Del Mar Planned Residential Development (the project) is a 110 acres site located within Torrey Highlands, Subarea IV of the North City Future Urbanizing Area (NCFUA) (Attached as Exhibit A). The applicant/ subdivider, D. R. Horton, proposes to build residential units on the site in accordance with the policies and requirements of the City Municipal Code and the approved Torrey Highlands Subarea.

As proposed, Torrey Del Mar consists of 320 market rate units and an affordable housing site consisting of 112 units for a total of 432 dwelling units. Of the 320 market rate units 52 are designated as V.L.D. (very low density) and only for these units the subdivider is eligible to meet its affordable requirement with payment of an in-lieu fee. The remaining 268 market rate units will have the affordable housing requirement of 54 units satisfied on-site. A 112-unit multiple family project will be constructed on the affordable housing site, lot 322. In addition to the 54 affordable units satisfying the subdivider's on-site requirement, a surplus of 58 units within the affordable housing project will be available to be sold to other Torrey Highlands subdividers' to satisfy their affordable housing requirement, or rented at market rates as specified in the Planned Residential Development (PRD) permit conditions.

### **Affordable Housing Requirement:**

Pursuant to the polices of the Torrey Highlands Subarea Plans, all residential development within Torrey Highlands, including Torrey Del Mar, is subject to an affordable housing obligation which may be fulfilled by:

- (1) providing no less than 20 percent of total housing units for occupancy by, and at rates affordable to, families earning no more than 65 percent of the median area income adjusted for family size, or
- (2) dedicating developable land of equivalent value.

### **Affordable Housing Tentative Map/Planned Residential Development (PRD) Conditions:**

The Executive Director of the Housing Authority, in conjunction with the developers and owners of property within Torrey Highlands and City Staff, have developed an affordable housing Tentative Map/PRD Condition which provides for two alternative mechanisms to fulfill the above stated obligation (Attached as Exhibit B). The first option is to provide for the project's affordable housing by construction of the required amount of affordable units on-site, (and also provide surplus affordable units if developed as a "common site" as described in paragraph A below). The other option is to provide the required number of affordable housing units off-site

# **EXHIBIT B**

R-292178

in another subdivider's project within Torrey Highlands which is developed as a "common site" with surplus affordable units.

**A. Provision of Affordable Housing Units On-Site:**

The Torrey Del Mar project is proposed as a "common site" on which the subdivider will meet its affordable unit requirement on-site as well as provide surplus units for other subdivider's to potentially meet their affordable unit requirements. The affordable housing requirement for Torrey Del Mar is satisfied by providing on-site 54 (fifty-four) affordable units and the remaining 58 (fifty-eight) units within the 112-unit multi-family project are surplus units as described below:

268 Detached market rate units on 268 lots.

54<sup>1</sup> Units which will be restricted for occupancy by, and at rates affordable to, households earning no more than 65 percent of the median area income, as adjusted for household size on lot 322. However, in the case of affordable rental units in which the Density Bonus applies, rental rates shall not exceed 60 percent of median area income. Affordability restrictions will remain in place for a period of 55 years.

58 Remaining or surplus units in affordable housing site which are available to satisfy other subdividers' requirements for affordable housing or to be rented at market rates. If proposed as market rate units a minimum of 8 of the units must be affordable units.

380 Total project with 268 single family and 112 unit affordable project

52 Detached market rate units designated V.L.D. (Very Low Density) on 52 lots. V.L.D. units are not used in the calculations for affordable housing requirements and will pay in-lieu fees.

432 Total units on-site including 52 units paying in-lieu fee

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<sup>1</sup>The North City Future Area (NCFUA) Framework Plan specifies in Section 7 that planning for the NCFUA that recognizes the use of the State mandated 25 percent density bonus. Each residential project of more than 10 units in Torrey Highlands will take advantage of this density bonus program to calculate the number of affordable housing required of each project. The Framework Plan's Estimated Housing Units assumes that the density bonus is granted for all housing projects. Torrey Highlands Subarea Plan requires a cap of 2600 dwelling units. Based upon this unit cap, the calculation of the density bonus for the 380 unit project (268 single family, 54 affordable units to meet subdivisions housing obligations plus 58 additional affordable units on-site as a receiver A common site for other Subarea IV subdividers to meet their affordable unit requirement) is derived as follows: The number of affordable units required is 20 percent of the pre-bonus units (i.e.  $20\% \times 268$  pre-bonus units = 54 affordable units).

## Affordable Housing Project Location and Unit Type:

D. R. Horton has proposed the location of the 112 unit affordable housing site in the north-eastern area of the project. An Exhibit showing the site layout and design concept is attached as Exhibit C.

The design concept is to build seven (7) separate 2 story structures comprising of 16 units each. The proposed units are contemplated to contain a proportionate mix of 1, 2 and 3 bedroom units, as follows:

	<u>Approx.</u> <u>Square Footage</u>	<u>Approx. Mix</u>
1 bedroom	608	16 units - 14%
2 bedroom	878	56 units - 50%
3 bedroom	1,027	<u>40 units - 36%</u>
		112 Total Units

The buildings have been designed by Starck Architect Group and D. R. Horton has entered into a Landlord/Tenant relationship agreement with BRIDGE Housing Corporation to build and manage the affordable housing project.

## Affordable Housing Timeline

The Torrey Del Mar project is anticipated to be constructed in several phases over a two to four year period, depending on market conditions and absorption rates. However, as stated in the affordable housing tentative map/PRD condition, the on-site affordable housing project building permits must be issued at the earlier of the issuance of the 134th market rate dwelling unit or 18 months after the filing of the first final map. The 134th market rate represents 50 percent of the 268 market rate units used for the calculations, excluding the 52 V.L.D. units from the total market rate units of 320.

Completion of construction of the on-site affordable housing project shall occur upon the earlier of 12 months after the issuance of building permits for the affordable housing project or 30 months after the filing of the first final map.

The issuance of permits for the construction of the 201st market rate unit shall not occur until the completion of the Affordable Housing Project is authorized by the City. The 201st market rate represents 75 percent of the 268 market rate units used for the calculations, excluding the 52 V.L.D. units from the total market rate units of 320.

Occupancy of the on-site affordable housing project shall occur no later than 180 days after the completion of construction as referenced above.

If individual lots are sold by D. R. Horton initially, these individual lot sales will count toward the permit issuance thresholds described above, and which are further specified in the TM/PRD Conditions attached hereto as Exhibit B.

R- 292178

The Executive Director of the Housing Authority has identified the Torrey Del Mar project as an expedite affordable housing project since this residential development is proposed as a receiver or "common site" in which the surplus units are intended for other subdividers' to meet their affordable unit requirements off-site within Torrey Highlands. As an expedite affordable housing project, the Torrey Del Mar Project will receive expedite processing status for all plan checks for the Torrey Del Mar's engineering plans, final maps and building permits.

**Security for the Timely Provision of Affordable Housing Project:**

D. R. Horton will be required, prior to recordation of the first final map, to execute an Affordable Housing Agreement and to post security in the form of a bond to cover construction costs of the affordable housing project. Further, D. R. Horton shall provide a deed of trust in favor of the Executive Director of the Housing Authority, recorded against the affordable housing site assuring the timely performance of this agreement. The deed of trust may be subordinated to construction deeds of trust and/or permanent financing deeds of trust in favor of institutional lenders, as approved by the Executive Director of the Housing Authority.

**Declaration of Covenants, Conditions and Restrictions:**

The units within the on-site Affordable Housing Project and site that are to be defined as affordable housing units must have recorded against them, in first priority, a declaration of Covenants, Conditions and Restrictions (CC&Rs) restricting the occupancy and affordability of the affordable housing project for a period of 55 years from the date of completion of the affordable project. All affordable units shall be for occupancy by and at rates affordable to, families earning no more than 65 percent of the Area Median Income, as adjusted for family size.

However, in the case of affordable rental units, in which provisions of the State Density Bonus Statute (Government Code Section 65915) applies, rental rates shall not exceed 60 percent of the Area Median Income, as adjusted for assumed family size and utilities.

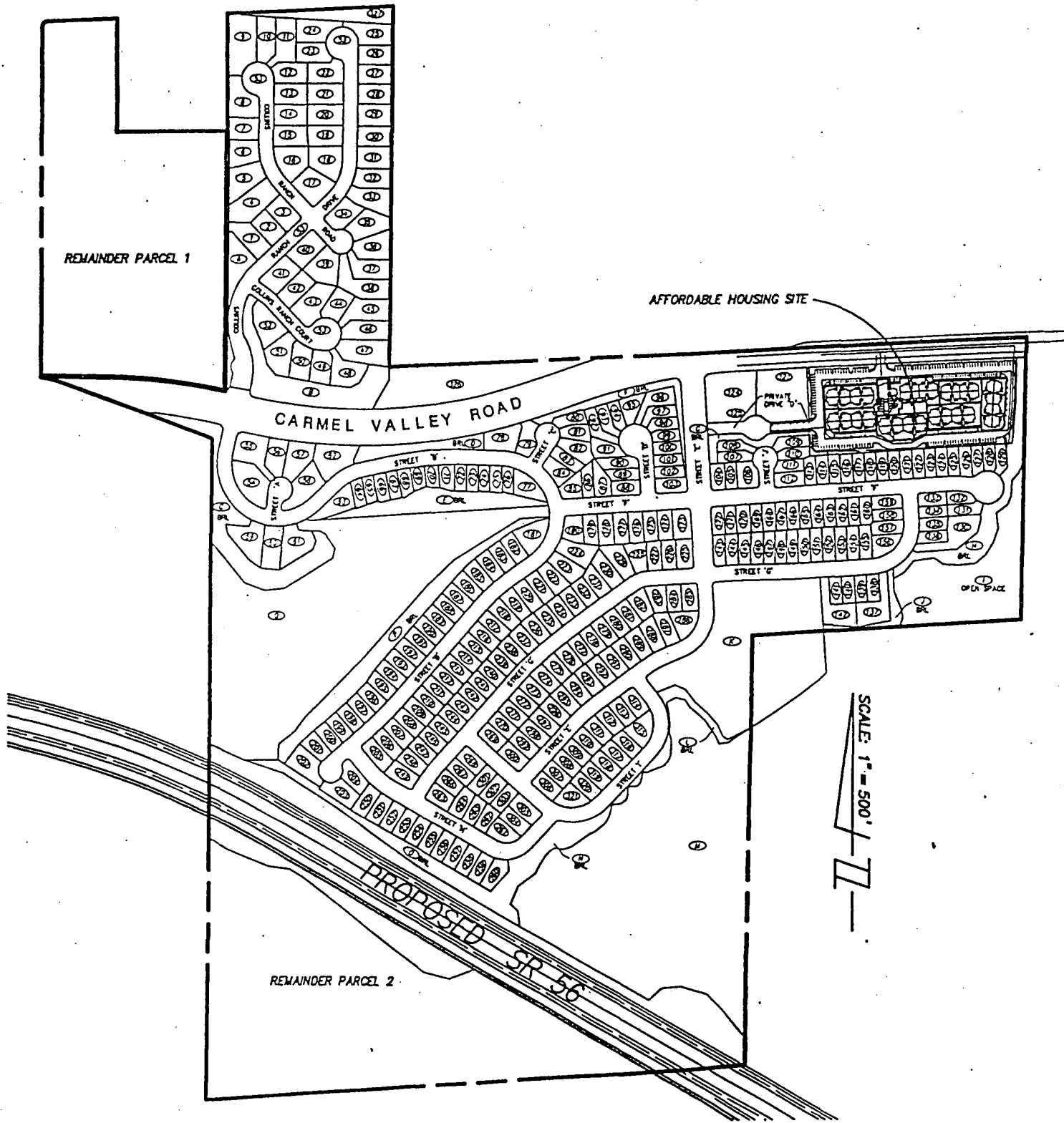
**B. Provision of Affordable Housing Off-Site:**

D.R. Horton's intent is to construct a 112-unit multiple family affordable housing project on lot 322 which will meet its affordable housing requirement and also serve as a common site project for other subdividers within the Torrey Highlands Subarea to meet their affordable unit requirements. However, as an alternative to satisfying the affordable housing requirement by providing units on-site, the project may, prior to the filing of the first final map, dedicate land of equivalent value within the Subarea that provides for and assures the construction and occupancy of affordable units within the Subarea on common sites, as specified in the Torrey Del Mar project's Tentative Map/PRD conditions (Exhibit B).

### Affordable Housing Project Location

In order to take advantage of this off-site alternative, the developer must obtain the approval of both the Executive Director of the Housing Authority and the City Manager through the execution of an "Affordable Housing Agreement". Such Agreement shall address the dedication of developable land off-site within the Subarea to provide for and assure the construction and occupancy of the required 54 affordable units, as well as the appropriateness of siting, design, unit mix, appearance, architectural and floor plans of the affordable housing off-site project. Such Agreement will serve to implement the project's affordable housing conditions of the Tentative Map and PRD (Exhibit B).

# TENTATIVE MAP COMPOSITE TORREY DEL MAR



**HUNSAKER  
& ASSOCIATES**  
SAN DIEGO, INC

PLANNING 1079 Huemakers St. Suite 200

R- 292178