

RESOLUTION NUMBER R-292988

ADOPTED ON APRIL 11, 2000

WHEREAS, Robert and Joan Thorburn, individuals, Owners/Permittees, filed an application with the City of San Diego for a permit to demolish two existing structures and construct a four-unit single-family planned residential development on portions of a 0.3 acre site, located at 12746 Via Borgia and 2241 Via Aprilia, legally described as Lots 10, 11, and 12, Block 3, Map No. 1527, filed February 5, 1913, in the Torrey Pines Community Plan area, in the R1-5000 zone (proposed R-3000 zone); and

WHEREAS, on January 20, 2000, the Planning Commission of The City of San Diego considered Planned Residential Development/Coastal Development Permit No. 98-0423, and pursuant to Resolution No. 2911-PC voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on April 11, 2000, 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 Planned Residential Development/Coastal Development Permit No. 98-0423:

PLANNED RESIDENTIAL DEVELOPMENT FINDINGS:

1. 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 proposed project, Soledad Creek Village, will provide a benefit to the City of San Diego by developing an infill residential project in a neighborhood which anticipated this type of development in the

Torrey Pines Community Plan. The proposed project will be consistent with the development pattern established by existing residential development within the neighborhood. The design of the proposed structures will be compatible in bulk and scale with other single family structures in the neighborhood. The proposed project is consistent with the Torrey Pines Community Plan. The proposed project will be consistent with the Progress Guide and General Plan and will not cause adverse affects to these policy documents or to the City of San Diego.

2. 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 permit controlling the development and continued use of the single-family development proposed for this site contains conditions addressing the project compliance with the City's Municipal Code and other regional, State and Federal regulations to prevent detrimental impacts to the health, safety, and general welfare of persons residing and/or working in the area. Conditions of approval require compliance with several operational constraints and development controls intended to assure the continued health, safety and general welfare of persons residing or working in the area. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and the Municipal Code regulations governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

3. The proposed use will fully comply with the relevant regulations of the Municipal Code in effect for this site. Specific conditions of approval require the continued compliance with all relevant regulations of the Municipal Code effective for this site and have been written as such into Planned Residential Development/Coastal Development Permit No. 98-0423. Development of multi-family lots shall meet the requirements of the R-3000 development criteria with regard to setbacks, floor area ratio, as allowed through a planned residential development permit. Concept plans for the project identify all other development criteria in effect for the site. All relevant regulations shall be complied with at all times for the life of the project.

COASTAL DEVELOPMENT FINDINGS:

4. The proposed development will not encroach upon any existing physical accessway legally utilized by the general public or any proposed public accessway identified in an adopted Local Coastal Program [LCP] Land Use Plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points. The proposed project is located at 12746 Via Borgia and 2241 Via Aprilia north of the Carmel Valley Road in the R1-5000 zone (proposed R-3000 zone) of the Torrey Pines Community Plan. The site is not located within any existing physical accessway legally utilized by the public to gain access to any resources located in the coastal zone, nor is the site located in a proposed accessway identified in an adopted LCP Land Use Plan. The proposed project meets all regulations of the Municipal Code governing the height of the proposed building and will not obstruct public views to or along the ocean or other scenic coastal areas from public vantage points.

5. The proposed development will not adversely affect identified marine resources, environmentally sensitive areas, or archaeological or paleontological resources. The

proposed development will be located on a site which is currently developed with two single-family structures. The site characteristics and resources have been inventoried and evaluated to determine if marine resources, environmentally sensitive areas, archaeological or paleontological resources are present on the site. Archaeological resources may be present on the site and mitigation will be implemented during grading if such resources are discovered during grading operations to avoid a direct adverse affect to these resources.

6. The proposed development will comply with the requirements related to **biologically sensitive lands and significant prehistoric and historic resources** as set forth in the **Resource Protection Ordinance, San Diego Municipal Code [SDMC] section 101.0462**, unless by the terms of the **Resource Protection Ordinance**, it is exempted therefrom. The proposed development complies with the requirements of the **Resource Protection Ordinance** addressing biologically sensitive lands, significant prehistoric and historic resources. Mitigation has been required in the **Mitigation Monitoring and Reporting Program [MMRP]** to reduce any potential adverse impacts resulting from developing the site to a level below significance consistent with the requirements of the **California Environmental Quality Act** and the **Resource Protection Ordinance**.

7. The proposed development will not adversely affect **identified recreational or visitor-serving facilities or coastal scenic resources**. The proposed site is located within a developed area. The development of the site with the proposed single family structures will have no adverse affects on recreational, visitor-serving facilities or coastal scenic resources located in other areas of the **City of San Diego**. The site is designated in the **LCP** and the **Torrey Pines Community Plan** for residential development and the proposed use is allowed at this location with the approval of a **planned residential development/coastal development permit**.

8. The proposed development will be sited and designed to prevent adverse impacts to **environmentally sensitive habitats and scenic resources** located in adjacent **parks and recreation areas**, and will provide adequate **buffer areas** to protect such resources. Recreational areas do not exist adjacent to this site. No parks or recreation areas are adjacent to the site. The proposed development will not create adverse impacts to these resources.

9. The proposed development will **minimize the alterations of natural landforms** and will not result in **undue risks from geologic and erosional forces and/or flood and fire hazards**. The proposed development includes the minimum necessary alteration of the natural landforms while allowing a reasonable use of the property. The existing site is predominantly level and only minor grading will be necessary to construct the single family structures.

10. The proposed development will be **visually compatible with the character of the surrounding area**, and where feasible, will restore and enhance **visual quality** in visually degraded areas. The site is not visually degraded nor in an area which is visually degraded, therefore, no restoration or enhancement to the **visual quality** of the site or neighborhood would be necessary to achieve visual compatibility with the character of the surrounding area. The design of the proposed structures have been designed to **blend the site development to other existing development** in the area.

11. The proposed development will conform with the City's Progress Guide and General Plan, the LCP, and any other applicable adopted plans and programs in effect for this site. The proposed development conforms with the Torrey Pines Community Plan which designates this site for residential development and allows for the proposed use. The implementing policy of the Progress Guide and General Plan and the Local Coastal Program is the community plan for this neighborhood with which the project is consistent. A LCP amendment will be required to approve the rezone for the site.

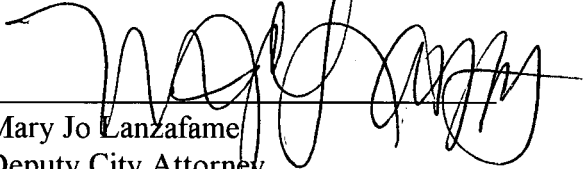
The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the decision of the Planning Commission is sustained, and Planned Residential Development/Coastal Development Permit No. 98-0423 is hereby granted to Robert and Joan Thorburn, individuals, Owners/Permittees, under the terms and conditions set forth in the permit attached hereto and made a part hereof

BE IT FURTHER RESOLVED, that this resolution shall take effect and be in force on the date the California Coastal Commission certifies this resolution as a Local Coastal Program amendment and not until the thirtieth day from and after its passage, whichever is later. No building permits for development inconsistent with the provisions of this resolution shall be issued unless application therefore was deemed complete prior to the date of adoption of this resolution by the City Council. If this resolution is not certified or is certified with suggested modifications by the California Coastal Commission, the provisions of this resolution shall be null and void.

APPROVED: CASEY GWINN, City Attorney

By


Mary Jo Lanzafame
Deputy City Attorney

MJL:pev
4/28/00
Or.Dept:Clerk
R-2000-1243

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/COASTAL DEVELOPMENT
PERMIT NO. 98-0423 [MMRP]
SOLEDAD CREEK VILLAGE**

City Council

This permit is granted by the Council of the City of San Diego to Robert and Joan Thorburn, Individuals, Owners/Permittees pursuant to San Diego Municipal Code [SDMC] sections 101.0901 and 105.0202. The 0.3 acre site is located at 12746 Via Borgia and 2241 Via Aprilia in the existing R1-5000 zone (R-3000 proposed zone) of the Torrey Pines Community Plan area. The project site is legally described as Lots 10, 11 and 12, Block 3, Map No. 1527, filed February 5, 1913.

Subject to the terms and conditions set forth in this permit, permission is granted to Owners/Permittees to demolish two existing structures and construct a four-unit single-family planned residential development described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated April 11, 2000 on file in the Office of Planning and Development Review. The facility shall include:

- a. Four single-family structures ranging in approximate size from 2,030 to 2,805 square feet; and
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Off-street parking facilities and all garage doors shall be roll-up types; and
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Municipal Code in effect for this site.

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

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

- a. The Permittees 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 Permittees and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.

5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.

6. The issuance of this permit by The City of San Diego does not authorize the applicant to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).

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 Permittees 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 Permittees by the City: (1) to grant Permittees 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 Permittees 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 Permittees maintaining the biological values of any and all lands committed for mitigation pursuant to this permit and of full satisfaction by Permittees of mitigation obligations required by this permit, as described in accordance with Section 17.ID of the IA.

8. The Owners/Permittees 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. 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 April 11, 2000, on file in the Office of Planning and Development Review. No

change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

10. 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 Owners 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 Owners of the property be allowed the special and extraordinary rights conveyed by this permit, but only if the Owners complies with all the conditions of the permit.

In the event that any condition of this permit, on a legal challenge by the Owners/Permittees 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 Owners/Permittees 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 new permit and the condition(s) contained therein.

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

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

13. All buildings shall comply with SDMC sections 101.0214 (Maximum Height of a Building or Structure) and 101.0215 (Procedural Requirements for Determination of Structure Height).

14. All buildings shall comply with SDMC section 101.0216 (Topographical Survey Requirements) and all building plans shall be predicated upon said concurrently submitted topographical survey. Said topographical survey (and accompanying grading plan) shall accurately depict both pre-existing grade and finished grade as set forth in SDMC section 101.0101.24 (Grade).

15. Rezoning of the subject property shall become effective with the adoption of the Local Coastal Program [LCP] amendment by the Coastal Commission.

16. This Coastal Development Permit shall become effective after the adoption of the LCP amendment by the Coastal Commission.

17. 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 April 11, 2000, on file in the Office of Planning and Development Review.

18. Prior to issuance of any grading permit, a fee shall be deposited with Planning and Development Review for the Los Peñasquitos Watershed Restoration and Enhancement Program.

The enhancement fee shall be computed on the basis of site grading at a rate of \$0.005 per square foot for all areas graded. The enhancement fee shall be computed by the applicant and verified by Planning and Development Review.

19. Prior to issuance of any building permit, a fee shall be deposited with Planning and Development Review for the Los Peñasquitos Watershed Restoration and Enhancement Program. The enhancement fee shall be computed on the basis of \$0.03 per square foot for all impervious surfaces created by the development. The enhancement fee shall be computed by the applicant and verified by Planning and Development Review.

20. The Owners/Permittees shall comply with the Mitigation Monitoring and Reporting Program [MMRP] as specified in Mitigated Negative Declaration, LDR No. 98-0423, satisfactory to the City Manager. Prior to the issuance of any building or grading permit, all mitigation measures specifically outlined in the MMRP shall be implemented for the following issue areas:

- A. Waste Management
- B. Archaeological Resources

21. No fewer than sixteen off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated April 11, 2000, 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.

22. 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.

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, unless a deviation or variance to the height limit has been granted as a specific condition of this permit.

24. A topographical survey conforming to the provisions of SDMC section 101.0216 may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this permit or a regulations of the underlying zone. The cost of any such survey shall be borne by the Permittees.

25. 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.

26. Prior to issuance of any building permit, a revised and corrected Exhibit "A" indicating the following:

- 1) The side yard setbacks on Plans B and C shall be accurately dimensioned and drawn to scale on the Site Plan.

- 2) Elevation plans shall correctly identify the site walls and not be over 3 feet in height within the setback.
 - 3) The height of plans A and D shall not exceed a thirty feet height limit.
 - 4) A cross-section shall be provided to verify the entry area for plan C can be exempt from the floor area calculations based upon Municipal Code regulations. Cross section lines shall be indicated on the Site Plan.
27. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
28. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
29. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (SDMC section 101.2001) to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked "Exhibit A," dated April 11, 2000, on file in the Office of Planning and Development Review.
30. 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 April 11, 2000, 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.
31. Prior to issuance of grading permits, interim landscape and erosion control measures, including hydroseeding of all disturbed land, shall be submitted to the satisfaction of the City Manager and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated April 11, 2000, on file in the Office of Planning and Development Review.
32. 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 Permittees 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.
33. Prior to issuance of any Certificate of Occupancy it shall be the responsibility of the Permittees 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.
34. 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 Permittees, or subsequent Owners shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

35. If any required landscape 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 Permittees. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.

Approved by City Council on April 11, 2000 by Resolution No. R-292988.

AUTHENTICATED BY THE CITY MANAGER

By _____

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

Robert Thorburn
Owner/Permittee

By _____

Joan Thorburn
Owner/Permittee

By _____

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

5/5/00

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