

RESOLUTION NUMBER R-294396

ADOPTED ON DECEMBER 12, 2000

WHEREAS, Aspen Creek, LLC, Owner/Permittee, filed an application with the City of San Diego for a permit to construct the Carroll Canyon Business Park, located on the west and east sides of Camino Ruiz along the planned alignment of Carroll Canyon Road, and legally described as the North Half, Southeast Quarter and Northeast Quarter, Southwest Quarter, Section 1, Township 15 South, Range 3 West, San Bernardino Base Meridian, in the Mira Mesa Community Plan area, in the AR-1-1 zone (previously referred to as the A1-10 and Hillside Review Overlay [HRO] zones) (proposed IL-2-1 zone (previously referred to as the M-1B and HRO zones)); and

WHEREAS, on September 28, 2000, the Planning Commission of the City of San Diego considered Planned Industrial Development/Resource Protection Ordinance [PID/RPO] Permit No. 98-0978, and pursuant to Resolution No. 3018-1-PC voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on December 12, 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 PID/RPO Permit No. 98-0978:

I. PLANNED INDUSTRIAL DEVELOPMENT FINDINGS, SAN DIEGO
MUNICIPAL CODE SECTION 101.0920

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 57.8 gross acre site is located within the physical landform known as Carroll Canyon lying between a primarily industrially developed area on the south mesa along Miramar Road north of U.S. Marine Corps Air Station Miramar and the residential community on the north mesa within the boundary of the Mira Mesa Community Plan area. This property is currently zoned AR-1-1 zone (previously referred to as the A1-10 and Hillside Review Overlay [HRO] zones) and is designated for mixed use within the community plan. Eleven lots will be subdivided for the development of a maximum of 445,183 square feet of business park/office floor area and two lots will be created to preserve sensitive areas as open space. In addition, the project will provide for the improvement of Carroll Canyon Road and the right-of-way for the future trolley line through the canyon. Surrounding uses within the canyon are ongoing mining operations pursuant to conditional use permits which contain provisions for reclamation of the sites and functional reuse of the land. The development of this project will fulfill a community need and will not adversely affect the City of San Diego's Progress Guide and General Plan or the adopted Mira Mesa Community Plan.

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 subdivision and industrial development of this 57.8 gross acre site for the buildout of 445,183 square feet of floor area 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 site is located within the floor of Carroll Canyon along the north facing slopes with adjacent development to the south being similar industrial use. Adjacent properties in the canyon are disturbed by permitted sand and gravel extraction and mining with residential uses beyond to the north atop the mesa. The alignment of Carroll Canyon Road and the right-of-way for the future trolley line extension separates the proposed industrial lots from the adjoining buildout. Brush management conditions will be applied to the slopes for protection of the developed properties. Reclamation plans accompany the conditional use permits for the adjoining mining uses that will provide for the future reuse and compatible development of those sites which would succeed the development 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 applications for Planned Industrial Development [PID] and Resource Protection Ordinance [RPO] Permits are accompanied by a Tentative Map and Rezone Application to permit the subdivision of this 57.8 gross acre site into thirteen lots with eleven lots for 445,183 square feet of industrial floor space and two open space lots. Conditions are imposed within the subdivision map resolution and within the PID and RPO Permits to regulate development. A Mitigation Monitoring and Reporting Program [MMRP] is applied to assure that impacts to Land Use, Landform Alteration/Visual Quality, Biological Resources, Geology/Soils, Hydrology/Water Quality, Traffic/Circulation, Air Quality and Paleontological Resources are reduced to levels of insignificance. With approval of requested actions and adoption of the permits and resolutions, development will fully comply with the relevant regulations in effect.

II. RESOURCE PROTECTION ORDINANCE FINDINGS, SAN DIEGO MUNICIPAL CODE SECTION 101.0462

A. The proposed development will be sited, designed, and constructed to minimize, if not preclude, adverse impacts upon sensitive natural resources and environmentally sensitive areas.

The industrial development plan has been designed to minimize disturbance to sensitive biological resources. The proposed development will be sited, designed, constructed and maintained to minimize adverse impacts on environmentally sensitive lands (100-year floodplain, hillsides, biological resources, and wetlands).

100-Year Floodplain: The Mira Mesa Community Plan designates the Carroll Canyon Creek floodplain as a restored open space system with pedestrian linkages and native riparian landscaping. The project incorporates these elements into the design. In addition, the Community Plan requires the construction of Carroll Canyon Road and provision of a LRT easement through the project site. Minimal floodplain disturbance is required to provide for these improvements. The proposed floodplain disturbance is consistent with the Mira Mesa Community Plan in that the development footprint outlined in the Community Plan will require floodplain disturbance. Floodwaters would not reach the proposed industrial pad areas because the proposed industrial development areas will be located outside of the 100-year floodplain (and floodway) limits. Only small portions of the utility corridor (containing the bike and hiking trail) will remain within the floodway.

Hillsides: The industrial development has been designed to minimize impacts to hillsides. More than half of the hillside impacts are due to the construction of Carroll Canyon Road, a City Circulation Element roadway. Impacts to hillsides due to industrial development (i.e. on Lot 2) have been reduced by 30,928 square feet or 65 percent of the original proposed disturbance. This reduction is the greatest amount achievable in order for the project to remain feasible to provide the roadway and minimal development area. The project is requesting an alternative compliance for unavoidable hillside impacts.

Biological Resources: Because the project site is not located within the Multi-Habitat Planning Area [MHPA], encroachment into sensitive biological resources is not limited, except that the goal is that impacts to wetlands should be avoided. The project will mitigate upland habitat impacts off-site, within or outside the MHPA. Wetland impacts would be fully mitigated through on-site wetland habitat revegetation.

Wetlands: Impacts to jurisdictional wetlands (as defined by RPO) would occur under the proposed project. Of the 0.56 acre of wetland impacts, 0.39 acre or 70 percent will be due to the construction of Carroll Canyon Road. The remaining impacts (0.17 acre) would result from the placement of portions of the hiking/bicycle trail and the required 50-foot buffer along the northern edge of the proposed industrial development. Accordingly, the industrial development will avoid direct impacts to wetlands. Issuance of a Resource Protection Permit requires a finding that these wetland impacts are unavoidable due to the nature of the design, the surrounding topography, and the general plan alignment associated with Carroll Canyon Road. The City's Land Development Code Biology Guidelines specify that an unavoidable impact to wetland may exist with regard to essential public facilities (i.e., in this case a circulation element road) for which no feasible alternative exists. In this case the alignment of Carroll Canyon Road is physically constrained to the extent that no feasible alternative alignment exists which would further reduce impacts to wetlands. Furthermore, complete avoidance of wetlands is not possible because altering the pre-determined road alignment may result in the need for a Community Plan amendment and the altered design would require a ten foot retaining wall along Carroll Canyon Road and would not meet the City's engineering design standards for safe travel. Avoidance of wetlands located on the northern periphery of the project site is also not feasible because: (1) a 30-foot high retaining wall would be required along the northern edge of development to support the slopes on Lots 8 and 9; (2) the sewer line extending north from Street "B" would have to be re-routed to the east where the slope would be less steep; (3) access to Lot 9 from Street "B" would be eliminated; and (4) the size of Lot 10 would have to be significantly reduced to compensate for the loss of pad area in Lot 9. Alternatives to incorporate also created other areas of impacts resulting in this design being preferred. The project proposes a mitigation program which would fully mitigate impacts to wetlands through on-site revegetation of 1.12 acres of upland habitat with wetland habitat (2:1 ratio). All impacts to wetlands would be mitigated "in-kind" and achieve "no-net-loss" of wetland function and values.

B. The proposed development will be sited and designed to prevent adverse impacts to environmentally sensitive habitats and resources located in adjacent parks and recreation areas and will provide adequate buffer areas to protect such resources.

The site is surrounded by existing and approved development on all sides, including industrial development to the south (Miralani Business Park) and east (Lion Miramar Business

Park), and aggregate materials mining operations to the north (CalMat property) and west (H.G. Fenton Materials property). The proposed project design is compatible with these surrounding land uses.

There are no identified public parks areas on adjacent lands and the site is not within the MHPA. However, the Mira Mesa Community Plan designates the Carroll Canyon Creek floodplain on the site as a restored open space system with pedestrian linkages and native riparian landscaping. The proposed project will provide a bicycle/hiking trail and landscaping along the project's northern and northwestern edges of industrial development abutting Carroll Canyon Creek. In addition, the proposed project will provide the required minimum 50 foot buffer between the industrial development and the creek. On the far northwestern portion of the site, an open space easement would be placed over an area where existing wetland habitat and a wetland habitat restoration area would be permanently preserved. The 50 foot buffer and designated trails are required by the Community Plan and will confine public access to the trails and discourage access to the creek area and restoration area, preventing potential disruption of environmentally sensitive areas (i.e. riparian habitat). In addition, an open space easement will be placed over a southern portion of the site located south of Carroll Canyon Road. This will allow for the preservation of natural steep hillsides and sensitive vegetation as permanent open space. Pedestrians and bicyclists traveling on the southern half of Carroll Canyon Road would utilize the non-contiguous sidewalks and Class II bike lanes, which will be provided within the right-of-way. These facilities would direct pedestrian and bicycle traffic away from the adjacent open space easements; thus, preventing adverse impacts on any adjacent sensitive biological resources. The proposed development will be sited and designed to prevent adverse impacts on any environmentally sensitive lands and resources located in adjacent parks and public open space area and will provide adequate buffer area to protect such resources.

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

The proposed development will minimize the alterations of natural landforms and will not result in undue risks from geological and erosional forces and/or flood and fire hazards. The industrial development has been designed to minimize impacts to hillsides (natural landforms). More than half of the hillside impacts are due to the construction of Carroll Canyon Road and the alignment of the road dictates where the remaining development can occur. The project is requesting an alternative compliance for unavoidable hillside impacts. Proposed conditions of the project approval will minimize risks resulting from geological and erosional problems and flood and fire hazards. In accordance with City direction, the development plan has been designed to minimize alterations of the natural landform through contour grading and landscaping of varying heights to create a undulating slope appearance on the proposed manufactured slopes to the north and south. In addition, erosion control measures will be provided and a brush management program would be implemented to reduce the potential for slope failure and brushfires. The

development will provide a circulation system that accommodates appropriate fire and safety vehicle access and the required brush management zones that separate industrial structures from potential fire hazards. Because Miralani Business Park (to the south of the project site) was never required to have an approved brush management plan on file with the City, the proposed project is offering a brush management easement to Miralani Business Park for the purposes of maintaining the slope for brush management purposes.

D. The proposed development will be visually compatible with the character of surrounding areas, and where feasible, will restore and enhance visual quality in visually degraded areas.

The preservation of open space will allow for the ongoing preservation of significant natural resources and provides for a trail linkage along the designated open space corridor adjacent to Carroll Canyon Creek. Feasible measures as set forth in Finding "E" below, will protect and preserve any historical, architectural, archaeological or cultural value of any potentially affected significant prehistoric site or resource. The surrounding areas have been visibly scarred by sand and gravel extraction and mining under conditional use permits and this particular site has been disturbed. A reclamation plan is in place for the areas mined and will allow for future redevelopment and use of those sites. The development of this site for eleven industrial lots, open space, a major street and future trolley line and for sensitive habitat restoration, will enable the site to be visually compatible with developed industrial parks to the south and east and to future planned development and reuse of the mined sites. Conditions for landscaping, trails and pedestrian uses will also enhance the visual quality.

E. The proposed development will conform with the City's Progress Guide and General Plan, the applicable community plan, the Local Coastal Program, or any other applicable adopted plans and programs in effect for this site.

The proposed development will not adversely affect the City of San Diego's Progress Guide and General Plan. The proposed development, a light industrial/business park, is consistent with the land use recommendations of the adopted Progress Guide and General Plan, which designates the property for industrial uses. The proposed development is consistent with the adopted Transportation Element, Industrial Element, Conservation Element, and Urban Design Element of the Progress Guide and General Plan by providing the type of mixed uses anticipated in the Mira Mesa Community Plan, and providing a development that can provide a financial contribution for constructing or participating in the construction of on-site infrastructure and transportation circulation improvements, as well as off-site transportation improvements south of the proposed intersection of Camino Ruiz and Carroll Canyon Road.

A relevant environmental goal of the Transportation Element addresses the need to provide a transportation system that is in balance with the types and intensities of land uses that it serves. Carroll Canyon Road, a City of San Diego Circulation Element roadway, is designated to cross

the site in an east/west alignment. The project proposes to construct a half-width segment of this roadway, grade and dedicate the right-of-way for full-width improvements, and bond for construction of the full width improvements. The Urban Design Element of the Mira Mesa Community Plan addresses the integration of new development with the natural landscape or within the framework of an existing community, with minimum impact on that community's physical and social assets. The project proposes to develop light industrial uses, provide for the extension of Carroll Canyon Road, and preserve open space on site. The nature of these proposed uses are consistent with the existing and planned character of the surrounding community and thus will not adversely affect the City's Progress Guide and General Plan.

The project site is designated for mixed use and open space land uses by the Mira Mesa Community Plan, and is included as part of the Carroll Canyon Master Plan area which identifies industrial/business parks as the predominant use. The proposed project is consistent with these land use designations by providing eleven industrial lots and two open space lots. In addition, the proposed project will be consistent with the goals set forth in the Mira Mesa Community Plan by providing the infrastructure needed to support high employment and the transportation requirements for light-industrial, heavy-commercial, professional office, and service-oriented land uses. In addition, the project would comply with the Community Plan's preservation requirements for open space and sensitive natural resources by preserving open space south of Carroll Canyon Road and in the northwestern portion of the project site.

III. RESOURCE PROTECTION ORDINANCE FINDINGS (ALTERNATIVE COMPLIANCE), SAN DIEGO MUNICIPAL CODE SECTION 101.0462(M)

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

RPO stipulates that impacts shall not occur to the 100-Year floodplain, hillsides, biological resources, and wetlands. Although, the proposed project will minimize and mitigate impacts to RPO-sensitive resources where feasible, impacts will still occur. Because the project would impact the floodplain, hillsides and wetlands, the project is seeking alternative compliance. Alternative compliance for impacts to biological resources is not required because the project will be allowed to mitigate upland habitat impacts off-site within the MHPA. The project terrain, nature of the site's topography, and relative location of the Carroll Canyon Creek floodplain substantially constrain the use of the property relative to hillside disturbance. Additionally, the project is further constrained by the project's commitment to provide for the construction of Carroll Canyon Road, an LRT easement, a 50 foot creek channel buffer, an approximate 200 foot wide creek channel, and pedestrian/bicycle trails (which are important Community Plan goals) within a relatively narrow piece of property. The final project design results in floodplain, hillside,

and wetland disturbance that is the minimum necessary to afford relief from the special conditions of the land not of the applicant's making.

100-Year Floodplain: Approximately 18.1 acres (31 percent) of the project site are located within the existing Carroll Canyon Creek 100-year floodplain. As a part of the proposed project, a manufactured slope would be constructed on the southern edge of the creek, containing riprap, a utility corridor, and pedestrian and bike trails which would modify the current limits of the 100-year floodplain, and thus, eliminating the possibility of floodwaters reaching the proposed industrial pad areas. Only portions (1.2 acres) of the utility corridor, which include the pedestrian and bike trails would remain within the floodplain/floodway. No permits would be issued for grading in the floodplain of Carroll Canyon Creek until the applicant obtains a Conditional Letter of Map Amendment or a Conditional Letter of Map Revision from FEMA Accordingly, alternative compliance is being requested to allow for the bicycle/hiking trail within the floodplain.

Hillsides: In accordance with City direction, the industrial development has been designed to minimize impacts to hillsides. A substantial portion (i.e., more than half) of the hillside impacts are due to the construction of Carroll Canyon Road. The remaining potential impacts to hillsides have been reduced (by 30,928 square feet), which is as much as physically feasible, through a reiterative design process involving several redesigns which have resulted in a reduction in impacts to hillsides. The hillside impacts not associated with the construction of Carroll Canyon Road arise almost entirely from the need to grade the area east of Camino Ruiz in order to elevate the pads to comply with existing floodplain regulations, to configure the grading in a manner which will minimize impacts to hillsides, and to achieve earthwork balance for the project. These design limitations and restrictions have resulted in a project where no feasible alternative remains which could further reduce the hillside impacts east of Camino Ruiz and achieve earthwork balance for the project. Accordingly, the project is seeking alternative compliance to allow for the hillside impacts.

Wetlands: Through the design process, impacts to wetlands have been significantly reduced. Of the 0.56 acre of wetland impacts, 0.39 acre or 70 percent will be due to the construction of Carroll Canyon Road. The remaining wetland impacts (0.17 acre) from the industrial development have been found to be unavoidable due to the nature of the design, the surrounding topography, and the general plan alignment associated with Carroll Canyon Road.

Wetlands situated within the proposed alignment of Carroll Canyon Road total 0.39 acres and consist of four isolated pockets of southern willow scrub and freshwater marsh and two seasonal drainages (non-wetland waters). In order to avoid impacts to the isolated and degraded wetland areas, an extensive and significant number of potentially unsightly retaining walls would need to be constructed. In order to meet the City of San Diego's safety and design standards for the construction of Carroll Canyon Road, the road will have

to be developed at vertical and horizontal elevations that would result in the protected wetlands existing within in relatively deep, isolated "wells," which would be removed from natural drainage areas and any potentially-related, sensitive habitat.

Remaining impacts to wetlands will occur in degraded and irregular shaped protrusions of disturbed wetland that occur at the northern edge of the proposed development and southern edge of the meandering creek bed. The disturbed wetland in this area consists of about 0.17 acre (or about 7,405 square feet). The nature of Carroll Canyon Creek, which has been highly degraded by aggregate mining operations that surround the project site adjacent to the creek, has resulted in irregular and shifting hydrological flows. Preservation of this 0.17 acre of wetland by eliminating project impacts would not guarantee survival nor provide an opportunity for the revegetation of upland habitat areas with better-quality wetland habitat. Avoidance of wetlands located on the northern periphery of the project site is also not feasible because: (1) a 30 foot high retaining wall would be required along the northern edge of development to support the slopes on Lots 8 and 9; (2) the sewer line extending north from Street "B" would have to be re-routed to the east where the slope would be less steep; (3) access to Lot 9 from Street "B" would be eliminated; and (4) the size of Lot 10 would have to be significantly reduced to compensate for the loss of pad area in Lot 9.

The project design of the road alignment and industrial pads represents the least total amount of impacts on wetlands feasible. A full mitigation program, which will mitigate impacts to wetlands through wetland habitat revegetation within the on-site open space easement will ensure preservation of the existing 3.24 acres of the non-wetland waters, mule fat scrub, and southern willow scrub located on the northern and western edges of the proposed development and provide a 1.12 acre revegetation area for the total 0.56 acre of disturbed and isolated wetland to be impacted by the project. The project will further provide an on-site restoration and rehabilitation area for re-establishment of a significant patch of willowy monardella.

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

The project's grading design has incorporated all feasible measures to minimize impacts to environmentally sensitive lands and there are no other feasible measures that can further minimize the potential adverse effects to sensitive resources.

100-Year Floodplain: As a part of the proposed project, a manufactured slope will be constructed on the southern edge of the creek, containing riprap, a utility corridor, and pedestrian and bike trails, which will modify the current limits of the 100-year floodplain. This proposed project design will eliminate the possibility of floodwaters reaching the proposed industrial pad areas because the proposed industrial development areas will be

located outside of the 100-year floodplain (and floodway) limits, and only small portions of the utility corridor (containing the bike and hiking trail) will remain within the floodway.

Hillsides: Manufactured slopes over ten feet in height with high visibility from major public roads or residential areas will be contour graded or undulated to produce a more natural appearance. Landscaping techniques using plant material of varying heights will be used in conjunction with contour grading to create a undulated slope appearance. The revegetation of graded slopes, with varying heights of plant materials, the contour grading and the undulation of slopes provide virtually all available mitigation measures to graded slopes to minimize potential adverse affects. Hillsides located on the southern portion of the site, south of Carroll Canyon Road would be preserved as permanent open space.

Biological Resources: The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, impacts to biological resources created by the proposed development. Mitigation requirements were determined using the mitigation ratios established under the City's Multiple Species Conservation Program [MSCP] Subarea Plan; i.e., Vegetation Tiers I through IV. Mitigation for project impacts to vegetation communities will consist of a combination of on-site revegetation and off-site habitat acquisition either inside or outside of the City's MHPA. Off-site acquisition sites must support equal or greater habitat value relative to the habitat tier type. All impacts to wetlands will be mitigated "in-kind" on-site and achieve "no-net-loss" of wetland function and values. Sensitive vegetation located on the southern portion of the site south of Carroll Canyon Road would be preserved as permanent open space.

A significant patch of willowy monardella exists in the central eastern portion of the site that will be impacted by the construction of Carroll Canyon Road and the project. Although the project site is not located within the MHPA and, therefore, may impact this willowy monardella without further mitigation, the project will establish an on-site restoration and rehabilitation area for re-establishment of this sensitive species.

The project design is the result of a reiterative process involving several redesigns which were intended to avoid impacts to sensitive biological resources and wetlands to the maximum extent feasible.

Wetlands: The proposed alignment of Carroll Canyon Road and the creation of development pads that will accommodate industrial uses outside the floodplain as proposed by the Mira Mesa Community Plan have been designed through a reiterative process to eliminate or substantially reduce impacts to wetlands and wetland habitat.

Existing wetlands situated within the proposed alignment of Carroll Canyon Road total 0.39 acres and consist of four isolated pockets of southern willow scrub and freshwater marsh and two seasonal drainages (non-wetland waters). In order to avoid impacts to the isolated

and degraded wetland areas, an extensive and significant number of potentially unsightly retaining walls would need to be constructed. In order to meet the City of San Diego's safety and design standards for the construction of Carroll Canyon Road, the road will have to be developed at vertical and horizontal elevations that would result in the protected wetlands existing within in relatively deep, isolated "wells," which would be removed from natural drainage areas and any potentially-related, sensitive habitat.

Remaining impacts to wetlands will occur in degraded and irregular shaped protrusions of disturbed wetland that occur at the northern edge of the proposed development and southern edge of the erratically meandering creek bed. The disturbed wetland in this area consists of about 0.17 acre (or about 7,405 square feet). The nature of Carroll Canyon Creek, which has been highly degraded by aggregate mining operations that surround the project site adjacent to the creek, has resulted in irregular and non-sustaining hydrological flows. Preservation of this 0.17 acre of wetland by eliminating project impacts would not guarantee survival nor provide an opportunity for enhancement of other portions of this wetland through natural or manufactured means.

As stated previously in these Findings, complete avoidance of wetlands is not feasible.

The project design of the road alignment and industrial pads represents the least total amount of impacts on wetlands feasible. A full mitigation program, which will mitigate impacts to wetlands through wetland habitat revegetation within the on-site open space easement will ensure preservation of the existing 3.24 acres of the non-wetland waters, mule fat scrub, and southern willow scrub located on the northern and western edges of the proposed development and provide a 1.12 acre revegetation area for the total 0.56 acre of disturbed and isolated wetland to be impacted by the project. The project will further provide an on-site restoration and rehabilitation area for re-establishment of a significant patch of willowy monardella.

C. Alternative compliance for the development will not adversely affect the City's Progress Guide and General plan.

The proposed development, with mitigation for impacts and wetlands restoration and off-site preservation, will not adversely affect the City of San Diego's Progress Guide and General Plan. The proposed development, a light industrial/business park, is consistent with the land use recommendations of the adopted Progress Guide and General Plan, which designates the property for mixed use. Alternative compliance is utilized where a proposed project, required to comply to the maximum extent feasible of the RPO Ordinance, does not comply. The facts contained in the project record must show that strict application would either: (1) result in unnecessary hardship to the applicant; or (2) create results in conflict with Council Policy, the Progress Guide and General Plan or any adopted community plan; or (3) preclude provisions of extraordinary benefit to the general public. The Carroll Canyon area around the project site has been utilized for mining

purposes and reclamation plans and proposals already submitted for properties to the west and east, have outlined various proposals of mixed uses and the alignment of Carroll Canyon Road from the west. In addition, the future trolley alignment will follow Carroll Canyon Road, providing alternative circulation for the limited width of the canyon. Existing locations of some of the wetlands are unavoidably impacted by the roadway while existing sewer lines in the valley floor are pre-existing impacts that will require City maintenance. The general development area lies between Carroll Canyon Road as proposed and the sewer line. The grade and alignment to permit Carroll Canyon Road to intersect with Camino Ruiz has also determined some of the limits on alternative roadway designs that reduce impacts. Approval of this design would not adversely affect the City's Progress Guide and General Plan.

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

The type of land use proposed (light industrial business park and open space) and the type and quantity of development proposed (eleven lots of manufacturing and fabrication operations and professional and business establishments and two open space lots) are consistent with the goals and objectives of the adopted Mira Mesa Community Plan, which designates this property (including areas containing hillsides, wetlands, vegetation, and the floodplain) for mixed use and open space uses.

The Mira Mesa Community Plan designates land adjacent to the project site and along the creek for mining activities. Those activities are planned to operate for another twenty years. Upon closure of the mining activities, these areas will be reclaimed and developed with industrial uses pursuant to the Community Plan's development criteria. The project site does not contain substantial amounts of aggregate resources, therefore, the site would not be conducive to aggregate mining. It would, however, connect to the future industrial uses planned for the adjacent mining operations. Accordingly, the proposed industrial/business park project also would be consistent with the long-term land use plan for the area.

The proposed development will conform to the adopted community plan for the area and any other applicable plans, policies, and ordinances. The project site is designated for mixed use and open space land uses by the Mira Mesa Community Plan, and is included as part of the Carroll Canyon Master Plan area which identifies industrial/business parks as the predominant use. The proposed project is consistent with these land use designations by providing eleven industrial lots and two open space lots. In addition, the proposed project would be consistent with the goals set forth in the Mira Mesa Community Plan by providing the development and infrastructure needed to support high employment and transportation requirements for light-industrial, heavy-commercial, professional office, and service-oriented land uses. In addition, the project would comply with the Community Plan's preservation requirements for open space and sensitive natural resources by preserving open space south of Carroll Canyon Road and in the northern and northwestern portions of the project.

The proposed development also will comply with the applicable regulations of the San Diego Municipal Code. The proposed project will be developed as a Planned Industrial Development [PID], as required by the City of San Diego and as specified by the Mira Mesa Community Plan. Design guidelines and development standards have been prepared for the PID, which address the development requirements and architecture and landscape architecture standards for the project. The design guidelines and development standards either meet or exceed the regulations and standards listed in the Property Development Regulations of SDMC section 131.0603 for the IL-2-1 zone (previously referred to as the M-1B zone and found in SDMC section 101.0435(2)).

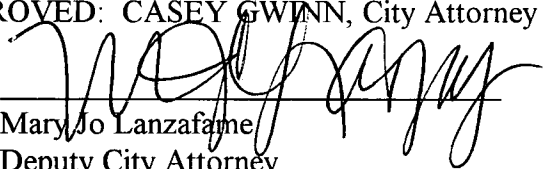
The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program [MSCP] Subarea Plan. The project site is located in the southern portion of the Northern MSCP study area, as indicated by the City of San Diego MSCP Subarea Plan. However, the project site is not located within of adjacent to the MHPA and does not function as a wildlife corridor. The project site is surrounded on all sides by existing development or sand and aggregate mining operations which is planned for future development when mining is completed. Consequently, the proposed project would not jeopardize the successful implementation of the City's MSCP Subarea Plan.

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

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Planned Industrial Development/Resource Protection Ordinance Permit No. 98-0978 is granted to Aspen Creek, LLC, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By


Mary Jo Lanzafame
Deputy City Attorney

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Reviewed by Robert Korch

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

AND WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PLANNED INDUSTRIAL DEVELOPMENT PERMIT/
RESOURCE PROTECTION ORDINANCE PERMIT NO. 98-0978
(MMRP)
CARROLL CANYON INDUSTRIAL PARK**

CITY COUNCIL

This Planned Industrial Development [PID] Permit/Resource Protection Ordinance [RPO] Permit is granted by the Council of the City of San Diego to Aspen Creek, L.L.C., an individual ownership, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 101.0920, 101.0462 and 111.0510. The 57.8 gross acre site is located on the west and east sides of Camino Ruiz along the proposed alignment of Carroll Canyon Road in the AR-1-1 zone (previously referred to as the A1-10 and Hillside Review Overlay [HRO] zones) (proposed IL-2-1 zone (previously referred to as the M-1B and HRO zones)) of the Mira Mesa Community Plan area. The project site is legally described as a Portion of the North Half, Southeast Quarter, and Northeast Quarter, Southwest Quarter, Section 1, Township 15 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 develop up to a maximum of 445,183 square feet of floor area on the eleven lots proposed for industrial use on the accompanying thirteen-lot vesting tentative map, described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated December 12, 2000, on file in the Development Services Department. The facility shall include:

- a. Up to 445,183 square feet of floor area on the eleven lots designated for mixed use/industrial development subject to the conditions contained within the accompanying tentative subdivision map resolution, this PID/RPO Permit and Exhibit "A," Carroll Canyon Business Park, Planned Industrial Development, Design Guidelines and Development Standards, dated December 12, 2000, and on file in the Development Services Department referred to as;
- b. Landscaping and Brush Management (planting, irrigation and landscape related improvements);
- c. Off-street parking facilities;
- d. Walls, fencing, parking lot and security lighting and pedestrian paths; 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 SDMC in effect for this site.
1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC 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 the Permittee signs and returns the Permit to the Development Services Department; and 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 December 12, 2000, on file in the Development Services Department. No changes, 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" conditions(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 proposed 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. Rezoning of the subject property shall become effective with recordation of the corresponding final subdivision map for the project site.

11. 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 approved Exhibit "A," dated December 12, 2000, on file in the Development Services Department).

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. The applicant shall comply with the Mitigation, Monitoring, and Reporting Program [MMRP] as specified in Environmental Impact Report, LDR No. 98-0978, satisfactory to the City Manager and the City Engineer. Prior to the issuance of grading or building permits, all mitigation measures as specifically outlined in the MMRP shall be implemented and/or assured for the following issue areas: Biological Resources, Geology/Soils, and Transportation.

13. Prior to the issuance of the first building permit, the applicant shall pay its fair share contribution towards the Mira Mesa Public Facilities Financing Plan and Facilities Benefit Assessment [FBA] to the satisfaction of the City Engineer.

14. Prior to the issuance of the first building permit, the applicant shall assure the provision of traffic mitigation measures 6-1 through 6-3 as specifically outlined in the MMRP, to the satisfaction of the City Engineer.

ENGINEERING REQUIREMENTS:

15. This PID/RPO Permit shall be consistent with Vesting Tentative Map No. 98-0978.

16. Prior to the issuance of any building permits, the applicant shall submit site specific development plans to the Transportation Development Section of the Development Services Department to ensure conformance to the City's parking standards. Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

17. Prior to the issuance of any building permits, the applicant shall provide for the installation of a traffic signal at the intersection of Camino Ruiz/Carroll Canyon Road, satisfactory to the City Engineer.

18. Prior to the issuance of any building permits, the applicant shall construct the fourth leg (northeast leg) at the intersection of Camino Ruiz/Miralani Drive with appropriate traffic signal modification, roadway configuration and striping, satisfactory to the City Engineer.

PLANNING/DESIGN REQUIREMENTS:

19. 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.

20. 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.

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

22. 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.

23. Prior to the issuance of any building permits, a development plan package for each lot or group of lots shall be submitted to the Development Services Department for approval. Plans shall be in substantial conformance with Exhibit "A," dated December 12, 2000, on file in the Development Services Department. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this permit have been granted.

24. Properties shall be developed in conformance with guidelines contained in Exhibit "A," Carroll Canyon Business Park, Planned Industrial Development, Design Guidelines and Development Standards, dated December 12, 2000, on file in the Development Services Department.

25. Each development plan package submitted per condition No. 23, shall become a part of Exhibit "A," dated December 12, 2000, on file in the Development Services Department.

26. 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 said mechanism is contained within a completely enclosed structure whose top and sides may include grillwork, louvers and latticework or suitable landscape screening.

27. No merchandise, supplies, or equipment shall be stored on the roof of any building.

28. The Owner/Permittee shall disclose to all initial and subsequent purchasers, lessees and other potential occupants that they will routinely see and hear military aircraft (fixed and rotary-wing) using Marine Corps Air Station Miramar and experience noise and vibration up to twenty four hours per day, seven days per week.
29. All signage associated with this development shall be consistent with sign criteria established by the approved project sign plan (per the approved Exhibit "A," dated December 12, 2000, on file in the Development Services Department) or the Citywide sign regulations where the sign plan does not address a particular sign request.
30. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
31. Pedestrian scale lighting shall be provided for the pedestrian/bike path(s) on the northerly and westerly perimeter of the site to encourage a safe environment for users. As in the general outdoor lighting condition No. 30 above, the lighting shall be shielded to avoid adverse impacts to the Carroll Canyon Creek and wetland areas adjacent to the path(s).
32. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
33. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
34. All uses, except storage and loading, shall be conducted entirely within an enclosed building. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences or a combination thereof. Walls or fences shall be solid and not less than six feet in height and, provided further, that no merchandise, material or equipment shall be stored higher than any adjacent wall.
35. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials, as set forth in the SDMC, 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 December 12, 2000, on file in the Development Services Department).
36. Enclosed bicycle lockers shall be provided on each of the eleven developable lots and the area allocated for bicycle lockers may be used in the calculation of the 40 percent of lot area required by the IL-2-1 zone for vehicular use.

LANDSCAPE REQUIREMENTS:

37. 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 Landscape Concept Plan, Exhibit "A," Landscape Concept Plan, dated December 12, 2000, on file in the Development Services Department. No change, modification or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted.

38. Prior to issuance of any grading permits, interim landscape and erosion control measures, including hydroseeding and slope revegetation of all disturbed land (all slopes and pads), shall be submitted to the satisfaction of the City Manager (including the Environmental Analysis Section of the Development Services Department) and City Engineer. All plans shall be in substantial conformance to the approved Exhibit "A," dated December 12, 2000, on file in the Development Services Department, and all other applicable conditions of related permits.

39. 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.

40. 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.

41. Maintenance of all on-site landscaping and landscaping within the public right-of-ways shall incorporate, to the maximum extent possible, the use of environmentally friendly technologies (referred to as Green Technologies) in order to protect the waterways and wetlands, including impacts to the Los Penasquitos Lagoon.

42. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved plans is damaged or removed during demolition, it shall be repaired and/or replaced in kind and equivalent size per the approved plans within thirty days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available and/or an increased number) to the satisfaction of the City Manager.

BRUSH MANAGEMENT PROGRAM:

43. The Brush Management Program is based on the Fire Department's Fire Hazard Severity Classifications of Low, Moderate and High. The Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit "A," Brush Management Program/Landscape Concept Plan, dated December 12, 2000, on file in the Development Services Department.

- a. Prior to the issuance of any grading or building permits, construction documents shall be submitted indicating that the appropriate brush management zones have been identified on the property in substantial conformance with Exhibit "A," dated December 12, 2000, on file in the Development Services Department. The construction documents (site plan, landscape/brush management plan) shall show Zone One as a "Building Restricted Area" and Zones Two and Three as "Negative Open Space Areas."
- b. Prior to the issuance of any building 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 December 12, 2000, on file in the Development Services

Department and shall comply with the Uniform Fire Code, SDMC section 55.0889.0201, and section 6 of the Landscape Technical Manual (Document No. RR-274506), on file in the Office of the City Clerk.

c. The Brush Management Zone Depths shall be as follows:

| <u>Lot No.</u> | <u>Hazard</u> | <u>Zone One</u> | <u>Zone Two</u> | <u>Zone Three</u> |
|------------------------|---------------|-----------------|-----------------|-------------------|
| Lots 3,4,5,8,9,11 | Low | 35' | 0' | 0' |
| Lot 2 | High | 40' | 40' | 30' |
| Lot 1 | Moderate | 35' | 30' | 20' |
| Lot 1/Northeast corner | | 45' | 0' | 20' |

- 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. Plant material shall be selected to visually blend with the existing hillside vegetation. No invasive plant material shall be permitted.
- g. Include 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 Development Services Department to discuss and outline the implementation of the Brush Management Program."

44. Prior to the issuance of any Certificate of Occupancy for any building, the approved Brush Management Program shall be implemented.

45. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Technical Manual, section 6.

46. Prior to the recordation of the final map, the Permittee, or subsequent owner/developer, shall identify on a "Non-Title Sheet" the brush management zones as "Fire Hazard Reduction Zones" with no specific dimensions called out for the brush management zones.

WATER REQUIREMENTS:

47. Prior to the issuance of any building or grading permits, the developer shall assure, by permit and bond, the design and construction of water facilities identified in the accepted water study, including a 16-inch water main in Camino Ruiz from Jade Coast Drive to Miralani Drive and a pressure regulating station between the 712 and 625 hydraulic grade lines [HGLs] at Miralani Drive, necessary to provide service to this development in a manner satisfactory to the Director of the Water Department and the City Engineer.

48. The developer shall install fire hydrants at location's satisfactory to the Fire Department, the City Engineer, and the Director of the Water Department.

49. Prior to the issuance of any building or grading permits, the developer shall grant all necessary water easements in accordance with the accepted water study, satisfactory to the Director of the Water Department and the City Engineer.

50. The developer agrees to design and construct all public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water and Sewer Design Guides.

APPROVED by the Council of the City of San Diego on December 12, 2000, by Resolution No. R- 294396.

4/26/01

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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.

ASPEN CREEK, L.L.C.
Owner/Permittee

By _____

By _____

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

4/26/01

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