

RESOLUTION NUMBER R-294525

ADOPTED ON FEBRUARY 6, 2001

WHEREAS, Donald and Mary Reed, Joseph and Carolyn Scarcia, et al., Individuals, Owners, and McMillin Companies, LLC, Permittee, filed an application with the City of San Diego for a Planned Residential Development/Resource Protection Ordinance [PRD/RPO] Permit to construct a 155 lot residential subdivision for the McMillin Torrey Highlands project, located between the proposed "A" Street and State Route 56/McGonigle Canyon westerly of the future Camino Ruiz, and legally described as Parcel 4, Parcel Map No. 8133 in the Torrey Highlands Subarea IV Plan area in the AR-1-1 zone (previously referred to as the A-1-10 and Hillside Review Overlay [HRO] zones) which is proposed to be rezoned to the RS-1-14 zone (previously referred to as R-1-5000 zone); and

WHEREAS, on November 30, 2000, the Planning Commission of the City of San Diego considered PRD/RPO Permit No. 98-1177, and pursuant to Resolution No. 3055-1-PC voted to recommend Council approval of the permit; and

WHEREAS, the matter was set for public hearing on February 6, 2001, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, after approval of the above referenced project by the City Council, Donald and Mary Reed, Joseph and Carolyn Scarcia, et al., Individuals, Owners, transferred ownership

of the property to TH Residential, LLC., a Delaware limited liability company, thereby making TH Residential, LLC., the new Owner/Permittee of the McMillin Torrey Highlands project, 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. 98-1177:

I. PLANNED RESIDENTIAL DEVELOPMENT FINDINGS, SAN DIEGO MUNICIPAL CODE SECTION 101.0901

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 78.4 gross acre site is located within the Torrey Highlands Subarea IV Plan area for the North City Future Urbanizing Area and is designated for low density residential use (2-5 dwelling units per gross acre). The use is described on Figures 4-2 and 4-3 of the Torrey Highlands Subarea IV Plan for Alternative 2, State Route [SR] 56 Freeway alignment. The project consists of two residential components with one being the development of 142 detached single-family dwelling units on individual lots and 26 affordable multi-family dwelling units subject to an agreement with the City of San Diego Housing Commission and in conformity with the Torrey Highlands Subarea IV Plan which requires each residential project to provide affordable housing. The development of this project as proposed, with the preservation of McGonigle Canyon as an urban amenity open space canyon, conforms to all design criteria, land use, grading and land development standards and requirements of the Torrey Highlands Subarea IV Plan. The development fulfills a community need for residential housing and a balance of preservation of open space under the Multiple Species Conservation Plan [MSCP] and Multiple Habitat Planning Area [MHPA] programs of the City of San Diego and because of this, will not adversely affect the City's Progress Guide and General 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 development of 142 single-family detached dwelling units and 26 attached multi-family dwelling units to fulfill this projects' affordable housing requirement in the development of this 78.4 gross acre site, will not be detrimental to the health, safety or general welfare of persons working or residing in the area and will not adversely affect other properties in the vicinity. This site is on the western fringe of the Torrey Highlands Subarea IV Plan and is surrounded by open space or other projects recently approved or in process of review. The nearest developed area is within the Rancho Penasquitos Planning Community farther to the east. In conjunction with other properties in the Torrey Highland Subarea IV Plan, this site was approved for a shift to allow development to occur based on the construction of the State Route 56 Freeway and on

infrastructure being built to accommodate the uses foreseen in this Plan. School sites, a park, commercial and industrial sites, residential and affordable residential units, and all roadways linking these properties to neighborhoods to the north, east and south will be provided along with the freeway that will benefit all the surrounding communities. With the Resource Protection Ordinance [RPO] being evaluated on the overall Torrey Highlands Subarea IV Plan area, sensitive areas are being preserved more comprehensively.

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 this 78.4 gross acre site with 142 single-family detached dwelling units and 26 multi-family affordable dwelling units, along with the preservation of open space and achieving compliance with RPO and satisfying the MSCP/MHPA plans through the processing of a Vesting Tentative Map, rezone from AR-1-1 zone (previously referred to as A-1-10 zone and HRO) and RS-1-14 zone (previously referred to as R-1-5000 zone) and a Planned Residential Development and Resource Protection Ordinance [PRD/RPO] Permit, will comply fully with the relevant regulations of the San Diego Municipal Code [SDMC] in effect for this site when the applications were made. As permitted by the PRD ordinance, deviations to street frontage and lot width are employed to help achieve the density envisioned by the plan. The project will comply with the Subdivision Map Act and local subdivision ordinances, the purpose and intent of the Planned Residential Development and Resource Protection Ordinances, the Mitigation Monitoring and Reporting Program and all other applicable regulations as represented on the drawings and plans marked Exhibit "A," dated February 6, 2001, on file in the Development Services Department.

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

The subdivision of this 78.4 gross acre site for the grading and development of 142 single-family residential dwellings, a 26 unit affordable multi-family housing site, the preservation of McGonigle Canyon as an urban amenity open space and other lots for homeowners association maintenance, is designed to comply with the provisions of the adopted Torrey Highlands Subarea IV Plan. The Torrey Highland Subarea IV Plan, Section 2.2 regarding Resource Protection Ordinance [RPO] references City Council Policy 600-40 and discusses how the RPO analysis was formulated for the overall 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 IV Plan, then future RPO permits may be approved using the substantial conformity determination referenced in the alternative compliance section of the RPO." This project is grading 43.06 acres of the 78.4 acre site (or 54.9% of the entire site) while designing to accommodate the alignment of State Route 56 across the northeast corner of the site and limiting encroachment into the peripheral slopes of McGonigle Canyon. The project site, with the constraints of the freeway and previous RPO analysis and guidelines and requirements for grading, has been designed in substantial compliance with all elements of the Torrey Highlands Subarea IV Plan, including land use, circulation, grading, inclusion of Affordable Housing, and

design guidelines. In addition, the project is consistent with the MSCP/MHPA criteria for this portion of the plan area. Impacts created by this subdivision are the minimum to implement the project and mitigation measures have been incorporated into the project to reduce adverse impacts to environmentally sensitive areas.

III. BRUSH MANAGEMENT FINDINGS, SAN DIEGO MUNICIPAL CODE SECTION 142.0412

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.

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 Council under Ordinance No. O-18451, and additional guidelines of the Landscape Technical Manual as shown on Exhibit "A," dated February 6, 2001, on file in the Development Services Department 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 the 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 alteration 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 section 142.0412 (Brush Management), Ordinance No. O-18451, as shown on Exhibit "A," dated February 6, 2001, on file in the Development Services Department, 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 7 and incorporate low precipitation irrigation systems to minimize runoff.

IV. BRUSH MANAGEMENT (ALTERNATIVE COMPLIANCE), SAN DIEGO MUNICIPAL CODE SECTION 142.0412

A. The proposed brush management program will meet the purpose and intent of Appendix IIA 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 7, and

brush management zones of the Land Development Code section 142.0412, adopted as Ordinance No. O-18451.

B. The 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 7.

C. The provisions outlined in Sections 6.6-2 of the Landscape Technical Manual (Document Number RR-274506 on file in the office of the City Clerk) shall be satisfied and the proposed development shall provide 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 February 6, 2001, on file in the Development Services Department. No other fire resistive features are required by the Fire Chief.

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


The site design complies with the Torrey Highlands Subarea Plan. However, site constraints which include 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. In addition, an alternative compliance Brush Management Program is provided for this project to support the purpose and intent of all applicable adopted plans and ordinances including the Biology Guidelines 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. 98-1177 is granted to TH Residential, 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 
for Mary Jo Lanzafame
Deputy City Attorney

MJL:mdw
05/09/01
09/07/01 COR.COPY
Or.Dept:Clerk
R-2001-1477
Form=permitr.frm
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 RESIDENTIAL DEVELOPMENT AND
RESOURCE PROTECTION ORDINANCE PERMIT NO. 98-1177
McMILLIN TORREY HIGHLANDS**

CITY COUNCIL

This Planned Residential Development/Resource Protection Ordinance [PRD/RPO] Permit, is granted by the Council of the City of San Diego to TH Residential, LLC, a Delaware limited liability company, pursuant to San Diego Municipal Code [SDMC] sections 101.0901, 101.0462 and 111.0510. The 78.4 gross acre site is located between the proposed 'A' Street and State Route 56/McGonigle Canyon westerly of the future Camino Ruiz in the AR-1-1 zone (previously referred to as A-1-10 zone and Hillside Review Overlay [HRO] zone) which is proposed to be rezoned to the RS-1-14 zone (previously referred to as R-1-5000 zone), of the Torrey Highlands Subarea IV Plan area. The project site is legally described as Parcel 4, Parcel Map No. 8133.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to subdivide the 78.4 acre site into 155-lots for the development of 142 single-family detached dwelling units, 1-lot for the development of a 26 multiple-family affordable housing site and 12-lots for open space, brush management, mitigation and Freeway right-of-way described and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated February 6, 2001, on file in the Development Services Department. The project shall include:

- a. 142 single-family residential dwelling units on individually subdivided lots in conformity with the underlying RS-1-14 zone (previously referred to as R-1-5000 zone) zone requirements and also subject to the design guidelines submitted and approved;
- b. 26 multi-family residential dwelling units developed to fulfill the requirement of the Torrey Highlands Subarea IV Plan for affordable housing, and developed with integration with the adjoining single-family neighborhood;
- c. Landscaping (planting, irrigation and landscape related improvements) and Brush Management;
- d. Off-street parking facilities for all residential components of the project to include both resident and guest parking with additional guest parking curbside;

- e. Walls and fencing, entry monumentation, pedestrian paths into the open space and to link neighborhoods, median landscaping where applicable, with additional multiple-family site improvements to include a tot-lot, bar-be-que/shade structure outdoor amenity; and
 - f. 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 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 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:
 - a. The Permittee signs and returns the Permit to the Development Services Department; 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 Owner/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 February 6, 2001, on file in the Development Services Department. No

changes, modifications or alterations shall be made unless appropriate applications or amendments to this permit 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 the special rights which the holder of the Permit is entitled as a result of this Permit. It is the intent of the City that the Owner of the property which is subject to 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 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. All grading shall conform to the Vesting Tentative Map [VTM] and in accordance with SDMC requirements, satisfactory to the City Engineer.

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

12. 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 Exhibit "A," dated February 6, 2001, on file in the Development Services Department).

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

13. The applicant shall comply with the Mitigation Monitoring and Reporting Program [MMRP] as specified in Mitigated Negative Declaration, LDR No. 98-1177, satisfactory to the City Manager and City Engineer. Prior to the issuance of the first applicable grading permit, the mitigation measures as specifically outlined in the MMRP as to safety, biological resources, uplands, hydrology/water quality, air quality, and paleontological resources, shall be implemented. Prior to the issuance of the first building permit(s), the mitigation measures as specifically outlined in the MMRP as to transportation/traffic circulation, interior noise and water conservation, shall be implemented. Prior to the issuance of Certificates of Occupancy, the mitigation measures as specifically outlined in the MMRP as to exterior noise and public services/utilities, shall be implemented. Land Use mitigation measures shall be implemented as applicable.

14. Based on the Multiple Species Conservation Program [MSCP] Land Use Adjacency Guidelines (Section 1.4.3 of the MSCP Subarea Plan), the following requirements shall be satisfied:

- a. **DRAINAGE:** Drainage from the development should not impact the Multiple Habitat Planning Area [MHPA] in terms of water quality, sedimentation and increased velocity. Drainage from residential lots should be directed towards streets and collected into a stormdrain system prior to discharge into the MHPA with controls in place for water quality impacts and velocity increases at the points shown on the VTM grading plan, Exhibit "A," dated February 6, 2001, on file in the Development Services Department.
- b. **LIGHTING:** Street lighting should not be located adjacent to the MHPA. Any outdoor lighting for residential lots that abut the MHPA should be directed away from the MHPA and shielded if necessary.
- c. **ACCESS:** Barrier fencing (masonry, chain-link or wrought iron w/ 3 foot solid base) should be installed at the MHPA boundary or alternatively at the top slope for each residential lot adjacent to the MHPA. Decorative fencing should be installed in locations where Streets "A" and "C" terminate adjacent to the open space to discourage access at points where trail access is not being provided. Trail access should be limited to the locations shown on VTM Exhibit "A," dated February 6, 2001, on file in the Development Services Department.
- d. **MHPA CONSERVATION:** The area within the MHPA is required to be conserved as open space either by easement or through fee title dedication to the City. Management of the lands within the MHPA shall be the responsibility of the entity that holds fee title. The project applicant shall also assist the City with the distribution of an MHPA educational brochure to new residents within the project site at the time of lot purchase.
- e. **NOISE:** Noise impacts affecting the MHPA must be mitigated or avoided during the breeding season (March 15 - Sept. 15) of the California gnatcatcher.
- f. **LANDSCAPING:** No exotic, invasive plant species shall be planted adjacent to the MHPA.
- g. **THIRD PARTY BENEFICIARY:** 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 Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. §§ 1531 et seq.).

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.

ENGINEERING REQUIREMENTS:

15. This Planned Residential Development and Resource Protection Ordinance Permit shall conform to Vesting Tentative Map No. 98-1177.

PLANNING/DESIGN REQUIREMENTS:

16. No fewer than fifty-two off-street parking spaces for the multi-family units shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A," dated February 6, 2001, on file in the Development Services Department. Of the fifty-two multi-family parking spaces (all spaces to be 8-feet in width), only 40 shall be assigned to the residents and the remaining 12 shall be unassigned for guest and extra tenant parking. The single-family dwellings shall maintain two off-street parking spaces per dwelling unit off-street (garages). 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 submittal of applications for building permits for the single-family dwelling unit component of the project, the applicant shall submit a Substantial Conformance Review [SCR] application to the Development Services Department to assure compliance with the residential design guidelines which were adopted with the approval of this PRD/RPO Permit.

18. 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.

19. 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.

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

21. 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.

22. No building additions requiring building permits, including patio covers, shall be permitted unless approved by the Homeowners Association and the Director of the Development Services Department. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.
23. All signage associated with this development shall be consistent with the sign plan presented on the Landscape Exhibit "A," dated February 6, 2001, on file in the Development Services Department and the Citywide sign regulations.
24. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
25. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
26. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
27. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked Exhibit "A," dated February 6, 2001, on file in the Development Services Department.

AFFORDABLE HOUSING:

28. Prior to the filing of the first final map, Subdivider shall comply with the requirements of the Torrey Highlands Subarea IV Plan for Affordable Housing [Affordable Housing Requirements] by satisfying the requirements of subparagraph A below:
 - A. Subdivider shall assure the construction and occupancy of an Affordable Housing Project consisting of twenty-six units to be constructed on Lot 143, as shown on the Exhibit "A," dated February 6, 2001, on file in the Development Services Department. Subdivider shall execute an 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 [Affordable Housing Site] for the construction of the Affordable Units [Affordable Units] on site, 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 his 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 Housing Project shall occur on or before the earlier of:
 - i. The issuance of building permits for construction of the 71st market rate dwelling unit (number of units which represents 50 percent of market rate units) or the date which is twenty-four months after the filing of the first final map;
 - ii. In no event shall the issuance of building permits for the construction of the 107th market rate unit occur until building permits are issued for construction of the twenty-six 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 71st and 107th or greater market rate unit.
 - b. Completion of construction of the Affordable Housing Project shall occur upon the earlier of:
 - i. Twelve months after the issuance of building permit for the Affordable Housing Project as referenced in Paragraph 2a hereof; or
 - ii. The date which is three years after the filing of the first final map.

Further the issuance of building permits for the construction of the 107th market rate unit (number of units which represents 75 percent of market rate units) shall not occur until the completion of the twenty-six affordable units is authorized by the City.
 - c. Occupancy of the Affordable Housing Project shall occur not later than 180 days after the completion of construction as referenced in paragraph 2b above.
 - d. For "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 months each. Good cause shall include, but not be limited to, Acts of God, labor strikes, war, riots, etc., as shall be determined by the Executive Director, in the Director's sole discretion.
3. A Declaration of Covenants, Conditions and Restrictions [CC&Rs], restricting the occupancy and affordability of the Affordable Housing Project for a period of fifty-five years from the date of completion of the Affordable Housing Project, which CC&Rs 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 65 percent of the area median income, as adjusted for family size. However, in the case of affordable rental units, the provisions set forth at California Government Code section 65915, referred to as the State Density Bonus Statute applies, rental rates shall not exceed 60 percent 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 CC&Rs) assuring the timely performance of the Affordable Housing Agreement referenced in Paragraph A hereof. The deed(s) of trust in favor of the Executive Director 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 the Director's sole discretion, if deemed essential to construction and/or operation of the Affordable Project, upon such terms and conditions as the Director may impose.
5. Such other additional 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 be required from time to time to effectuate the provisions of Affordable Housing Program as contemplated by these condition(s) of approval.
7. Moratoria enacted by the City Council for the public health, safety and welfare which are imposed on the project, shall toll the time periods set forth in this permit and the Vesting Tentative Map.

29. The McMillin Torrey Highlands Affordable Housing Program dated February 6, 2001, on file in the Development Services Department is attached to these Planned Residential Development conditions. The provisions of the Affordable Housing Program shall not in any way modify or change any provisions of the Affordable Housing requirements. To the extent that there is any inconsistency between the two the terms of the condition shall prevail.

LANDSCAPE REQUIREMENTS:

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 February 6, 2001, on file in the Development Services Department. No changes, modification or alteration shall be made unless appropriate application or amendment to this Permit has been granted.

31. Prior to the 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 February 6, 2001, on file in the Development Services Department, and all other applicable conditions of related permits.

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 Owner/Permittee shall initiate such measures within forty-five 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 identified as Document No. RR-274506 on file in the Office of the City Clerk.

33. Prior to issuance of any Certificate of Occupancy it shall be the responsibility of the Owner/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 shall 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 Owner/Permittee, or subsequent Owner shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Landscape Technical Manual.

35. 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:

36. The Permittee shall implement the following requirements in accordance with the Alternative Compliance Brush Management Program shown on Exhibit "A," Brush Management Program/Landscape Concept Plan, dated February 6, 2001, on file in the Development Services Department:

- a. Prior to issuance of any engineering permits for grading, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the property in substantial conformance with Exhibit "A," dated February 6, 2001, on file in the Development Services Department.
- b. Prior to 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 Marshall. The construction documents shall be in substantial conformance with Exhibit "A," dated February 6, 2001, on file in the Development Services

Department, and shall comply with the Uniform Fire Code (SDMC § 55.0889.0201), the alternative compliance provision of section 6 of the Landscape Technical Manual (Document No. RR-274506) on file at the office of the City Clerk and SDMC section 142.0412 (Ordinance No. O-18451).

- c. The Alternative Compliance Brush Management Program, using the Alternative Compliance provision, shall consist of two zones consistent with the Brush Management regulations of the SDMC section 142.0412 as follows:

<u>Lot #s [East of I-805 and El Camino Real]</u>	<u>Zone One</u>	<u>Zone Two</u>
5 through 7, 13, 27 through 33, 35, 36, 48 through 54, 59, 70, 143*	35'	50'
8 through 12, 14, 23 through 26, 37 through 47, 55 through 58	35'	40'

*Lot 143 Zone One varies from 30 to 35 feet.

- d. The construction documents shall conform to the Architectural features as described in Section 6.6-2 of the Landscape Technical Manual.
- e. Within Zone One combustible accessory structures with less than a one hour fire rating are not permitted (including, but not limited to decks, trellises, gazebos, etc.) while 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 Fire Marshall and the City Manager's approval.
- f. The following note shall be included 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."

37. Prior to final inspection and issuance of any Certificate of Occupancy for any building, the approved Brush Management Program shall be implemented.

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

WATER REQUIREMENTS:

39. Prior to the issuance of any building or grading permits, the developer shall assure, by permit and bond, the design and construction of appropriate public water facilities as identified in the accepted water studies, necessary to serve this development, in a manner satisfactory to the Director of the Water Department and the City Engineer.

40. Prior to the issuance of any building permits, the developer shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two hydrants or

R- 294525

30 dwelling units are located on a dead-end main then the developer shall install adequate facilities to provide a redundant water supply, satisfactory to the Director of the Water Department.

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

42. Providing water for this development is dependent upon prior construction of certain water facilities in previously approved TM Nos. 98-0261, 96-7676, 88-1041, and 95-0153, including, but not limited to, the completion of the Black Mountain Reservoir and associated pipelines. If facilities have not been constructed when required for this development, then the construction of certain portions of the previously approved water facilities, as required by the City Engineer, will become off-site improvements for this development.

WASTEWATER REQUIREMENTS:

43. The developer shall construct their fair share of the Carmel Valley Trunk Sewer and may enter into a Reimbursement Agreement for all development that exceeds the fair share of the Carmel Valley Trunk Sewer.

44. Prior to the issuance of any building permits, the developer shall assure, by permit and bond, the construction of all public sewer facilities as required by the accepted sewer study necessary to serve this development, including vehicular access within easements. Sewer facilities, as shown on the approved site plan, may require modification based on the accepted sewer study.

45. The developer shall provide evidence, satisfactory to the Director of the Metropolitan Wastewater Department, indicating that each lot will have its own sewer lateral or provide CC&Rs for the operation and maintenance of on-site private sewer mains that serve more than one lot.

INFORMATION ONLY

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit/tentative map, may protest the imposition within 90 days of the approval of this development permit/tentative map by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the Council of the City of San Diego on February 6, 2001, by Resolution No. R-294525.

5/11/01; CORRECTED 09/07/01

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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.

TH RESIDENTIAL, LLC.,
a Delaware limited liability company
Owner/Permittee

By _____

By _____

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

5/11/01; CORRECTED 9/7/01

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