

RESOLUTION NUMBER R-296612

ADOPTED ON JUNE 4, 2002

WHEREAS, Farwest American Trust/Farwest American Enterprises, LTD., Owner/ Permittee, filed an application with the City of San Diego for Planned Development Permit/Site Development Permit [PDP/SDP] No. 40-1069 to construct ten, two-story apartment buildings, for a total of forty-two dwelling units known as the Summerwind Village Apartments project, located on the southeast corner of Madden Avenue and Caulfield Drive, and legally described as portion of South $\frac{1}{2}$, Northwest $\frac{1}{4}$, Southeast $\frac{1}{4}$, Northeast $\frac{1}{4}$, Section 27, Township 18 South, Range 2 West, San Bernardino Base Meridian, in the Otay Mesa-Nestor Community Plan area, in the RM-1-1 zone which is proposed to be rezoned to the (previously referred to as the); and

WHEREAS, on May 2, 2002, the Planning Commission of the City of San Diego considered Planned Development Permit/Site Development Permit No. 40-1069, and pursuant to Resolution No. 3261-PC voted to recommend City Council approval; and

WHEREAS, the matter was set for public hearing on June 4, 2002, 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 it adopts the following findings with respect to PDP/SDP Permit No. 40-1069:

A. PLANNED DEVELOPMENT PERMIT

1. The proposed development will not adversely affect the applicable land use plan. The project site is designated for residential density by the Otay Mesa-Nestor Community Plan and the Progress Guide and General Plan. The project includes an amendment to redesignate the

site from Low Density Residential (5-10 dwelling units per acre) to Low-Medium Residential (10-15 dwelling units per acre). This change will allow an increase in the number of allowable dwelling units and will provide a good transition between adjacent single-family and multiple-family residential development. In addition, the project will increase the regional housing supply within walking distance of transit and commercial development. The project as proposed will not adversely affect the Otay Mesa-Nestor Community Plan and the Progress Guide and General Plan, as amended.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The permit controlling the development contains conditions addressing the proposed project compliance with City's regulations and other regional, State and Federal regulations to prevent detrimental impacts to the health, safety, and welfare of persons residing in the area. All Uniform Building, Fire, Plumbing, Electrical, and Mechanical Code governing the construction and continued operation of the development apply to this site to prevent adverse affects to those persons or other properties in the vicinity.

3. The proposed development will comply with the regulations of the Land Development Code. Development of the proposed site will meet the required regulations and development criteria of the RM-1-1 (Residential Multi-Unit) zone in all areas except the following. Where a 20-foot street sideyard setback is require, the trash enclosure will observe a 10-foot setback and two four-foot high retaining walls will observe a 5-foot and 9-foot setback respectively along Beyer Boulevard. Staff supports these encroachments. The walls and the trash enclosure will be out of view from the public right of way because both the walls and trash enclosure will be below grade along Beyer Boulevard and behind the homes that adjoin Madden Avenue.

A deviation from height is requested because the existing drainage ditch on the premises will be filled to create a flat lot. The proposed homes will then be developed on top of the filled drasinage ditch. San Diego Municipal Code [SDMC] Chapter 11, Article 3, Division 2, Section 113.0270(3) measures height from all points on top of a structure to existing grade or proposed grade, which is lower, directly below each point. The structure height from existing grade would make Buildings 5, 6, 7, 8, and 9 exceed the height limit ranging from 6-feet to 8-feet. However, with the importation of fill to be placed in the drainage ditch, the structure height of Buildings 5, 6, 7, 8, and 9 will not exceed the height limit if measured from proposed grade. The proposed grading and import of dirt will create a flat lot and will match the grade of the properties to the south and west.

4. The proposed development, when considered as a whole, will be beneficial to the community. The proposed development is beneficial to the Otay Mesa-Nestor community. The surrounding neighborhood has been completely developed except for the proposed site. To the south exist multi-family development, to the west and north is single family dwelling units and to the east is a community park. The site in its current stage is a vacant lot often cluttered with debris and trash. The proposed project will provide additional housing and public improvements to the community. In addition the proposed structure's motif and landscape will be consistent with the existing neighborhood.

5. Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. Permitting the encroachment of the trash enclosure to within 10-feet inside the 20-foot street side yard setback along Beyer Boulevard will allow it to be screened from the public right of way. Permitting the encroachment of the two four-foot high retaining walls, one observing a 5-foot and the other observing 9-foot setback respectively, inside the 20-foot street side yard, will allow the development to observe the 20-foot sideyard setback along Madden Avenue. The walls will be hidden from public view since the multi-dwelling structures will be developed in front of them and landscape will be planted to grow over the walls. This will allow the multi-family dwellings that are adjacent to Madden Avenue, to enjoy additional open space area and have non-contiguous sidewalks installed along Madden Avenue. Street trees and dense landscaping will be planted on both sides of the sidewalk.

Permitting the height deviation will allow the roofline of the proposed structures to be consistent with other roofline heights adjacent to the premises. The deviation will make the lot equivalent in grade elevation with the adjoining lots to the south and west.

B. SITE DEVELOPMENT PERMIT

1. The proposed development will not adversely affect the applicable land use plan. (See number 1 above)

2. The proposed development will not be detrimental to the public health, safety, and welfare. (See number 2 above)

3. The proposed development will comply with the applicable regulations of the Land Development Code. (See number 3 above)

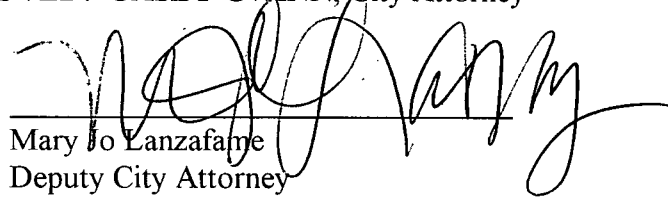
The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Planned Development Permit/Site Development Permit No. 40-1069 is granted to

Farwest American Trust/Farwest American Enterprises, LTD., 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

MJL:pev

8/5/02

1/10/03 Cor. Copy

Or. Dept: Clerk

R-2002-1782

Form=permitr.frm

Reviewed by William Zounes

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 DEVELOPMENT PERMIT/SITE DEVELOPMENT PERMIT NO. 40-1069
SUMMERWIND VILLAGE APARTMENTS
CITY COUNCIL

This Permit, is granted by the City Council of the City of San Diego to Farwest American Trust, Owner(s) and Farwest American Enterprises LTD, Permittee pursuant to the Land Development Code of the City of San Diego. The 3.34 acre site is located at the southeast corner of Madden Avenue and Caulfield Drive in the RM-1-1 zone of the Otay Mesa-Nestor community plan. The project site is legally described as portion of South ½, NW 1/4, SE 1/4, NE 1/4, Section 27, T18S R2W, San Bernardino Meridian, in the City of San Diego, County of San Diego.

Subject to the terms and conditions set forth in this Permit, permission is granted to Farwest American Trust Owner(s) and Farwest American Enterprises, LTD, Permittee for Planned Development Permit/Site Development Permit/Rezone to construct ten, two-story apartment buildings for a total of forty-two dwelling units described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A," dated June 4, 2002 on file in the office of the Development Services Department. The facility shall include:

- a. Forty-two unit attached two and three bedroom multi-family complex with attached garage ranging from approximately 1,100 square feet and 1,200 square feet each; and
- b. Landscaping (planting, irrigation and landscape related improvements); and
- c. Off-street parking facilities; and
- d. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of

this Permit, and any other applicable regulations of the Land Development Code 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/Land Development Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to 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 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. The issuance of this permit by The City of San Diego does not authorize the applicant to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. 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 June 4, 2002, on file in the office of 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 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 obtaining this Permit. It is the intent of the City that the Owner/Permittee 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/Permittee of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner/Permittee complies with all the conditions of this Permit.

10. In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

11. Rezoning of the subject property shall become effective with recordation of the Site Development Permit/Planned Development Permit.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

12. ENVIRONMENTAL/MITIGATION CONDITIONS HERE

The applicant shall comply with the Mitigation, Monitoring and Reporting Program (MMRP) as specified in Environmental Impact Report or Mitigated Negative Declaration, PTS Project No. 1791 (LDR No. 40-1069), satisfactory to the City Manager and the City Engineer. Prior to issuance of any grading permits and/or building permits, mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Biological Resources
Water Quality
Historical Resources (Archaeology)
Paleontological Resources

PLANNING/DESIGN REQUIREMENTS:

13. No fewer than 93 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated June 4, 2002, on file in the office of Development Services Department. Parking spaces shall comply at all times with requirements of the Municipal/Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.
14. 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.
15. 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.
16. A topographical survey conforming to the provisions of the Municipal/Land Development 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.
17. 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.
18. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located.
19. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
20. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
21. No merchandise, material or equipment shall be stored on the roof of any building.
22. No mechanical equipment shall be erected, constructed, or enlarged on the roof of any

building on this site, unless all such equipment is contained within a completely enclosed architecturally integrated structure.

23. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (Land Development Code Sec.) 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(s) A."

LANDSCAPE REQUIREMENTS:

24. No change, modification or alteration shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.

25. In the event that a foundation only permit is requested by the Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit 'A' Landscape Concept Plan, dated June 4, 2002, on file in the Office of the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area.'

26. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards (including planting and irrigation plans, details and specifications) shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit 'A,' Landscape Concept Plan, dated June 4, 2002, on file in the Office of the Development Services Department.

27. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way improvements shall be submitted to the City Manager for approval. Improvement plans shall include a Street Tree Location Plan, which identifies a station point for each street tree location that takes into account a 40 square foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees

28. Location of street trees shall be identified and reserved during improvement activities and on all site plans prepared for subsequent building permit applications, with actual installation taking place prior to issuance of a certificate of occupancy for a specific building permit. The construction documents shall be in substantial conformance with Exhibit 'A,' Landscape Concept Plan, dated June 4, 2002, on file in the Office of the Development Services Department.

29. Prior to issuance of any engineering permits for grading, construction documents for slope

planting or revegetation and hydroseeding of all disturbed land including irrigation shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to Permit 40-1069 (including Environmental conditions) and Exhibit 'A,' dated June 4, 2002, on file in the Office of the Development Services Department.

30. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A No Fee Street Tree Permit shall be obtained for the installation, establishment and on-going maintenance of all street trees.

31. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

32. The Permittee or subsequent Owner shall be responsible for the maintenance of all street trees and landscape improvements in the right-of-way consistent with the Landscape Standards unless long-term maintenance of street trees and right-of-way landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

33. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within 30 days of damage or Certificate of Occupancy.

ENGINEERING REQUIREMENTS:

34. Prior to building occupancy, the applicant shall conform to Section 62.0203 of the Municipal Code, "Public Improvement Subject to Desuetude or Damage." If repair or replacement of such public improvements is required, the owner shall obtain the required permits for work in the public right-of-way, satisfactory to the permit-issuing authority.

35. The drainage system proposed for this development, as shown on the approved plans, is subject to approval by the City Engineer.

36. Prior to the issuance of any building permits, the applicant shall obtain a bonded grading permit from the City Engineer (referred to as an "engineering permit") for the grading proposed for this project. All grading shall conform to the requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

37. Prior to the issuance of any building permits, the applicant shall obtain an Encroachment Removal Agreement, from the City Engineer, for landscaping in Madden Avenue, Caulfield Drive and Beyer Boulevard.

38. Prior to the issuance of any building permits, the applicant shall assure, by permit and bond, the abandonment and removal of a portion of the City drain near the corner of Madden Avenue and Caulfield Drive, the installation of a drain pipe connecting to the existing public drain at that corner going south along Madden Avenue and then east per the grading plan, the replacement of approximately 6 linear feet of sidewalk on Beyer Boulevard adjacent to the existing pedestrian ramp and the installation of 2 driveways on Madden Avenue and a pedestrian ramp at the corner of Caulfield and Madden.

39. Prior to the issuance of any building permits, the applicant shall abandon the slope easement along Beyer Boulevard, satisfactory to the City Engineer.

40. Prior to the issuance of any building permits, the applicant shall process a lot line adjustment map which shall include the abandonment of the slope easement adjacent to Beyer Boulevard, all satisfactory to the City Engineer.

41. Prior to the issuance of any building permits, the applicant shall dedicate right-of-way at the corner of Beyer Boulevard and Caulfield Drive sufficient to produce a 10-foot curb-to-property line distance, satisfactory to the City Engineer.

TRANSPORTATION DEVELOPMENT:

42. No fewer than 93 parking spaces shall be maintained on this site at all times.

43. Prior to the issuance of the first building permit, applicant shall assure by permit and bond, placement of signs and marking to clearly identify the northerly driveway on Madden Avenue as an "exit only" , satisfactory to the City Engineer.

44. Prior to the issuance of the first building permit, applicant shall dedicate adequate right-of-way along project frontage on Caulfield Drive to provide 30 feet between the centerline to the property line distance.

45. Prior to the issuance of the first building permit, applicant shall assure by permit and bond half width improvements along project frontage on Caulfield Drive including 20 feet of pavement curb, gutter and 5-foot sidewalk within 10-foot curb to property line distance, satisfactory to the City Engineer.

46. Prior to the issuance of the first building permit, applicant shall assure by permit and bond half width improvements along project frontage on Madden Street including 20 feet of pavement

curb, gutter and 5-foot sidewalk within 10-foot curb to property line distance, satisfactory to the City Engineer.

WATER REVIEW:

47. Prior to the issuance of any building permits, the Owner/Permittee shall provide evidence to the Development Project Manager indicating that application for water service has been made to the California-American Water Company (CAWC).

48. Further, due to the City of San Diego's present right to acquire CAWC's assets by eminent domain at a future date certain, prior to the issuance of any building permits, the Owner/Permittee shall deposit with the City an amount the City deems equal to the value of meters, hydrants, pipes, and other public water utilities that benefit the Owner/Permittee's property and which are paid for or installed by CAWC.

49. The City shall set such deposit aside in a separate account to be used only for the future City acquisition of the CAWC assets. If the Owner/Permittee enters into any reimbursement agreement with any utility relative to facilities installed by the Owner/Permittee, then the Owner/Permittee shall assign any such agreement to the City of San Diego.

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 66020.

APPROVED by the Council of the City of San Diego by Resolution No. R-296612, on June 4, 2002.

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.

FARWEST AMERICAN TRUST
Owner

By _____

FARWEST AMERICAN ENTERPRISES LTD
Permittee

By _____

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

R- 296612