

(R-2003-1040)

RESOLUTION NUMBER R-297656

ADOPTED ON FEBRUARY 18, 2003

WHEREAS, H.G. Fenton Materials Company, a California Corporation, Owner/ Permittee, filed an application with the City of San Diego to amend certain land use plan(s) including the Mission Valley Heights Specific Plan, the Mission Valley Community Plan and the City of San Diego's Progress Guide and General Plan; to amend Planned Commercial Development [PCD] Permit No. 84-0128; and a planned development permit to develop commercial office uses on Lot 3 in lieu of restaurant use(s) known as the Mission Valley Heights - Lot 3 project, on a 2.22-acre site located at 7675 Mission Valley Road, and legally described as Lots 1 and 3, Mission Valley Heights, Map No. 11034, in the Mission Valley Heights Specific Plan and Mission Valley Community Plan area, in the MV-M/SP (Multiple-Use/Special Permit) zone; and

WHEREAS, on November 21, 2002, the Planning Commission of the City of San Diego considered Planned Development Permit [PDP] No. 8902, and pursuant to Resolution No. 3329-PC voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on February 18, 2003, 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 No. 8902:

**PLANNED DEVELOPMENT PERMIT - SAN DIEGO MUNICIPAL CODE
SECTION 126.0604(A)**

1. The proposed development will not adversely affect the applicable land use plan. The proposed project involves amendments to existing PCD 84-0128 and the Mission Valley Heights Specific Plan to change the land use for Lot 3 from an 8,800 square foot restaurant to a 26,000 square foot office building. Therefore, the project will not adversely affect the amended specific plan. The approved office development of Lot 24 will be reduced from 200,000 square feet to 189,500 square feet to accommodate the new office use on Lot 3. The realignment of trips between Lots 3 and 24 will not result in increased trips beyond that originally assumed at build out of the two lots. Pedestrian connections from the new office building to adjacent streets and the adjoining shopping center will implement the pedestrian circulation concepts of the specific plan. Proposed landscaping and site design are consistent with the recommendations of the Specific Plan.

The project meets or exceeds all relevant regulations of the San Diego Municipal Code [SDMC]/ Land Development Code [LDC]. PCD 84-0128 permits Lot 1, located across the street to the north, to construct four buildings ranging from one to seven stories in height. The proposed building on Lot 3 will be 36 to 40 feet in height, depending upon the height of the mechanical equipment enclosure on the roof. This is appropriate at this location as the building pad is recessed about 14 feet below Mission Valley Road on the north. Additionally, the properties to the west are developed with multi-storied commercial office buildings, and the property to the south is developed with a shopping center. The building design conforms to the site and architectural design guidelines in the Mission Valley Heights Specific Plan. The project's scale is consistent with the pattern of development already established in the Mission Valley Heights Specific Plan area.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed office building has been designed to comply with the regulations and design criteria of the SDMC/LDC and the Mission Valley Heights Specific Plan. Conditions have been added to the permit to ensure compliance with these regulations.

3. The proposed development will comply with the regulations of the Land Development Code. Staff has reviewed the application and all related exhibits and determined that the proposed development will comply with all relevant regulations of the SDMC/LDC. No deviations are proposed.

4. The proposed development, when considered as a whole, will be beneficial to the community. The proposed office building on Lot 3 will provide job opportunities in the community. Location of the building adjacent to the existing shopping center will reduce vehicular trips for lunchtime traffic and routine shopping errands. The project is consistent with the design guidelines of the Mission Valley Specific Plan and is an appropriate use for the property.

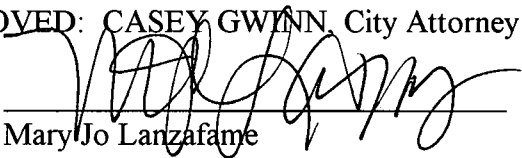
5. Any proposed deviations pursuant to SDMC section 126.0602(b)1 are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. Staff has reviewed the proposal and determined that no deviations are being requested nor are any included within the project.

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 No. 8902 is granted to H.G. Fenton Materials Company, a California Corporation, 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
2/24/03
Or.Dept:Clerk
R-2003-1040
Form=permitr.frm
Reviewed by William Tripp

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 NO. 8902
MISSION VALLEY HEIGHTS - LOT 3 - PROJECT NO. 2052
(AMENDMENT TO PLANNED COMMERCIAL DEVELOPMENT PERMIT
NO. 84-0128)
CITY COUNCIL

This Permit is granted by the City Council of the City of San Diego to H.G. Fenton Materials Company, a California Corporation, Owner/Permittee pursuant to San Diego Municipal Code [SDMC] section(s) 126.0113 and 126.0601. The 2.22-acre site is addressed as 7675 Mission Valley Road and located east of Highway 163, west of Mission Center Road, and north of Friars Road, within the MV-M/SP (Multiple-Use/Specific Plan) zone of the Mission Valley Heights Specific Plan and the Mission Valley Community Plan Areas. The project site is legally described as Lots 1 and 3, Mission Valley Heights, Map No. 11034.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to develop a two-story, 26,000 square-foot, commercial office building on Lot 3, described as, and identified by size, dimension, quantity, type and location on the approved Exhibit "A," dated February 18, 2003, on file in the Office of the Development Services Department. The facility shall include:

- a. On Lot 1 - Four buildings ranging from one to seven stories in height, containing 296,500 square-feet of commercial office space and 988 off-street parking spaces;
- b. On Lot 3 - One, two-story, maximum 26,000 square-foot commercial office building and 110 off-street parking spaces;
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking facilities; 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:
 - 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 agency.
 6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this Permit 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.)
 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 site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. At all bus stops within the project area, if any, the Permittee shall be responsible for installing sidewalk improvements where needed to comply with American with Disability Act [ADA] requirements and in accordance with standards contained in the City of San Diego Street Design Manual.

9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated February 18, 2003, on file in the Office of the Development Services Department. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) of this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this 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.

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.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. The applicant shall comply with the Mitigation, Monitoring and Reporting Program [MMRP] as specified in Environmental Impact Report or Mitigated Negative Declaration, Project No. 2052 (LDR No. 41-1000), 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:

Hydrology/Water Quality

PLANNING/DESIGN REQUIREMENTS:

12. 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 a 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.

13. 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.

14. 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 a condition of this Permit or a regulations of the underlying zone. The cost of any such survey shall be borne by the Permittee.

15. 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.

16. Prior to issuance of any grading or building permit(s) an access easement for ingress and egress for pedestrian and vehicular traffic to and from Lot 3 shall be obtained from/across Lots 4 through 7, Mission Valley Heights, Map 11034, located to the west, and from/across Lots 1 through 13, Friars-Mission Center, Map 12245, located to the south, to the satisfaction of the Director of the Development Services Department.

17. All signage associated with this development shall be consistent with sign criteria established by the Mission Valley Heights Specific Plan.

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. 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 6 feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.

22. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Mechanical and Utility Equipment Screening Regulations (SDMC/LDC section 142.0801) 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 18, 2003, on file in the Office of the Development Services Department.

23. This Planned Development Permit shall not become effective until the effective date of the accompanying Mission Valley Heights Specific Plan amendment.

24. Medical office and retail uses shall not be permitted within this development.

25. No merchandise, material or equipment shall be store on the roof of any building.

26. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Refuse and Recyclable Material Storage Regulations (SDMC/LDC section 142.0801) 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 18, 2003, on file in the Office of the Development Services Department.

27. This Permit supercedes PCD Permit No. 84-0128, which shall be of no further force or effect.

28. The developer shall provide sidewalks per City of San Diego standards, State of California Title 24 accessibility regulations, and all other applicable regulations as approved by the City of San Diego Engineer.

TRANSPORTATION DEVELOPMENT REQUIREMENTS:

29. No fewer than 110 off-street automobile parking spaces, including five ADA accessible spaces, and eight carpool spaces, shall be provided as required in SDMC section 142.0530. In addition, a minimum of two motorcycle parking spaces, two bicycle spaces, and one bicycle locker and shower facilities shall be provided. All parking shall be permanently maintained on the

property within the approximate location shown on the project's Exhibit "A," dated February 18, 2003, on file in the Office of the Development Services Department. Further, all on-site parking stalls and aisle widths shall be in compliance with requirements of the SDMC, and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the City Manager.

ENGINEERING REQUIREMENTS:

30. Prior to issuance of any building permits, the Applicant shall obtain a bonded grading permit for the grading proposed with this project. All grading shall conform to SDMC requirements pertaining to grading, in a manner satisfactory to the City Engineer.

31. The drainage system with inclusion of post-construction Best Management Practices device(s) for this project, as shown on the approved plans, is subject to approval by the City Engineer.

WASTEWATER REQUIREMENTS:

32. Prior to the issuance of any grading or improvement plans, the developer shall grant adequate sewer access easements on-site and off-site, including vehicular access to each manhole through drive aisles, for all public sewer facilities that are not located within fully improved public rights-of-way, satisfactory to the Director of the Metropolitan Wastewater Department.

33. Vehicular access roadbeds shall be a minimum of 20--feet wide and surfaced with suitable approved material satisfactory to the Director of the Metropolitan Wastewater Department. An additional 5-feet of width per additional utility is required for easements containing more than one utility. For sewer mains more than 10-feet deep, two feet of additional easement width for each foot of depth over 10-feet shall be required.

34. No structures of landscaping that would inhibit vehicular access shall be installed in or over any sewer access easement.

35. No structures or landscaping, including storm drains, private sewer facilities and enhanced paving, shall be installed in or over any easement prior to the applicant obtaining an Encroachment Maintenance and Removal Agreement.

36. No trees or shrubs exceeding 3 feet in height at maturity shall be installed within 10 feet of any public sewer utilities.

37. All proposed on-site sewer facilities shall be private.

38. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.

INFORMATION ONLY

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

APPROVED by the City Council of the City of San Diego, by Resolution No. R-297656, on February 18, 2003.

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.

H.G. FENTON MATERIALS COMPANY,
a California Corporation
Owner/Permittee

By _____

By _____

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

R-297656