

RESOLUTION NUMBER R-301671

DATE OF FINAL PASSAGE: JULY 24, 2006

RESOLUTION OF THE CITY OF SAN DIEGO GRANTING
THE APPEAL OF THE METROPOLITAN WASTEWATER
DEPARTMENT IN CONNECTION WITH THE MIRAMAR
TRUNK SEWER PROJECT.

WHEREAS, the City of San Diego Metropolitan Wastewater Department, Owner/ Permittee, filed an application with the City for a Site Development Permit, SDP No. 87992, to upgrade and replace 5,456 linear feet of sewer pipeline known as the Miramar Trunk Sewer Project, located within Rose Canyon, approximately one-quarter of a mile south of Nobel Drive and three-quarters of a mile north of Government Drive; and

WHEREAS, on April 6, 2006, the Planning Commission of the City of San Diego considered SDP No. 89772, and pursuant to Resolution No. 3989-PC voted to approve the permit on condition that only the pipe bursting method of installation be used; and

WHEREAS, the Metropolitan Wastewater Department appealed the Planning Commission decision to the Council of the City of San Diego on the grounds that limiting installation to the pipe-bursting method could be uncompetitive and encounter difficulties due to unknown soil conditions; and

WHEREAS, Mitigated Negative Declaration, SCH No. 300611056, was also prepared in connection with the Project; and

WHEREAS, this matter was set for public hearing on July 24, 2006, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the matter; and

WHEREAS, under City Charter section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and a public hearing was required by law implicating due process rights of individuals affected by the decision and the City Council was required by law to consider the evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council adopts the following findings with respect to the Miramar Trunk Sewer Project, Site Development Permit, SDP No. 87992:

Site Development Permit Approval Findings - Section 126.0504

1. The proposed development will not adversely affect the applicable land use plan.

The subject property is located in an area identified as Park, Open Space in the University Community Land Use Plan. The University Community Plan (UCP) recognizes that existing sewer facilities may need to be extended or improved as development occurs. The UCP states (page 209) "Private development should finance its public utility needs and provide improvements both off-site and on-site in accordance with present Council Policy." The project as proposed is for the replacement of an existing utility. The project has been designed to minimize impacts to environmentally sensitive plant and animal habitats. In accordance with Council Policy 400-13, upon project completion the site would be promptly returned to preexisting conditions. Revegetation would be performed in all the project work areas and temporary access paths. Therefore, the project as proposed will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The existing sewer pipelines have exceeded their rated capacity. To keep the existing sewer pipelines would give higher risk to future sewer spills and be detrimental to the public health, safety, and welfare. The proposed development to relocate and replace old sewer pipelines has been designed in accordance to the City Green Book, Landscape Manual and the California Environmental Quality Act Guidelines. Relocating and replacing old sewer pipelines according to the aforementioned regulations would create improved access and avert any potential for future sewer spills. Therefore, the development as proposed will not be detrimental to public health, safety, and welfare.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The project as proposed will comply with the University Community Land Use Plan within portions of the OP-2-1 zone (Open Space – Parks), the City Green Book, Landscape Manual, the California Environmental Quality Act Guidelines and all other applicable regulations of the Land Development Code. The proposed development will proceed in accordance with all other applicable regulations of the Land Development Code, as conditioned within Site Development Permit No. 87992.

Supplemental Findings--Environmentally Sensitive Lands

4. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.

The proposed project consists of replacing/upsizing the existing sewer main in place and maintaining existing long term access to maintain the trunk sewer and mains that discharge into the trunk sewer. This will result in accessible pipelines that can be easily maintained insuring the aversion of future sewer spills. To the extent possible, access routes and project activities shall be restricted to the least sensitive areas thereby minimizing impacts to sensitive habitats and jurisdictional areas on the project site. Implementation of the Mitigation Monitoring and Reporting Program (MMRP), as outlined in Section V of the MND, would reduce impacts to biological resources to below a level of significance. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.

5. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

The project site is located within geologic hazard zones 53 and 54 as shown on the City's Seismic Safety Study Geologic Hazards Maps. Zone 53 is characterized by level or sloping terrain, unfavorable geologic structure, low to moderate risk. Zone 54 is characterized by steeply sloping terrain, unfavorable or fault controlled geologic structure, moderate risk.

At the conclusion of the project, the original contours will be restored, minimizing the alteration of the landforms. The Geological Report reviewed by staff, determined the development as proposed will not result in undue risk from geologic and erosional forces, flood or fire hazards because it has been designed and will be constructed according to the City Green Book, Landscape Manual and the California Environmental Quality Act Guidelines and all other applicable regulations of the Land Development Code.

6. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

The project has been sited to minimize impacts to environmentally sensitive lands. The path in Upper Rose Canyon follows the bench from the construction of the original trunk sewer for the sewer replacement project, minimizing the amount of grading required. Following the trunk sewer replacement, the construction corridor will maintain a maximum eight-foot path with turnarounds required for Canyon Proficient Vehicles and cleaning equipment. No path is proposed between certain manholes to minimize wetland impacts and paths were selected along the least biologically impactful routes, as identified by the project biologist.

7. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.

Portions of the proposed project, within Rose Canyon, are within the Multi-Habitat Planning Area (MHPA) of the City of San Diego Multiple Species Conservation Plan (MSCP) Subarea. To the extent possible, access routes and project activities shall be restricted to the least sensitive areas thereby minimizing impacts to sensitive habitats and jurisdictional areas on the project site. In compliance with the Subarea Plan, habitat disturbance, that has been deemed unavoidable, would be restored or mitigated after the project has been completed. Although the project would result in impacts to biological resources within the MHPA, the MSCP Subarea plan anticipates improvements to existing and future infrastructure within urban canyons.

In addition, in order to reduce potential direct and/or indirect impacts to the MHPA from the proposed construction, the applicant shall be required to comply with and implement according to the MSCP MHPA Land Use Adjacency Guidelines as described in Section V of the Mitigated Negative Declaration No. 33120. Thereby, rendering the project as proposed to be consistent with the City of San Diego's MSCP Subarea Plan.

8. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

The project is not located on or near any public beaches. The distance from the coastline to the project area is approximately 3.8 miles. Therefore, the proposed development would not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

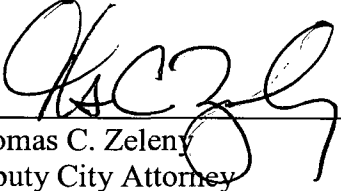
9. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

Biological Resources, Historical Resources (Archaeological) and Land Use were considered during the environmental Initial Study and determined the project as proposed could have a significant environmental effect. Subsequent revisions to the project proposal create the specific mitigation identified in Section V of Mitigated Negative Declaration No. 33120. The project was revised and now avoids or mitigates the potentially significant environmental effects noted above. A Mitigation Monitoring and Reporting Program has been prepared and will be implemented as determined within Mitigated Negative Declaration 33120.

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 appeal of City of San Diego Metropolitan Wastewater Department is GRANTED; the decision of the Planning Commission limiting installation to the pipe-bursting method is OVERRULED; and the Miramar Trunk Sewer Project, Site Development Permit SDP No. 87992 is granted to City of San Diego Metropolitan Wastewater Department, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By  _____
Thomas C. Zeleny
Deputy City Attorney

TCZ:mb.
08/24/06
Or.Dept:MWWD
R-2007-126

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

WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 177041

SITE DEVELOPMENT PERMIT NO. 87992
MIRAMAR TRUNK SEWER MMRP – PROJECT NO. 33120
PLANNING COMMISSION

This Site Development Permit is granted by the Planning Commission of the City of San Diego to CITY OF SAN DIEGO METROPOLITAN WASTEWATER DEPARTMENT, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0504. The project site is located within Rose Canyon approximately a quarter mile south of Nobel Drive, and three quarters of a mile north of Governor Drive within the OP-2-1' zone (Open Space – Parks) of the University Community Plan. The project site is legally described as United States Geological Survey 7.5 minute map, La Jolla quadrangle, in Township 15 South; Range 3West.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/ Permittee to replace and upgrade 5,456 linear feet of sewer main from 15-inch to 21, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated April 6, 2006, on file in the Development Services Department.

The project shall include:

- a. Replacement of approximately 4,260 linear feet of sewer main west of I-805 from 15-inch to 21-inch; and
- b. Replacement of approximately 1,196 linear feet of sewer main east of I-805 from 15-inch to 21-inch;
- c. Landscaping (planting, irrigation and landscape related improvements); 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.

STANDARD REQUIREMENTS:

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. 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," on file in the Development Services Department. No changes,

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.

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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.
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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," on file in the Development Services Department. No changes,

modifications or alterations shall be made unless appropriate application(s) or amendment(s) 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.

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 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. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

12. As conditions of Site Development Permit No. 87992, the mitigation measures specified in the MMRP, and outlined in the Mitigated Negative Declaration, LDR NO. 33120 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

13. Prior to issuance of any construction permit, the applicant shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

14. The Permittee/City Department shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the Mitigated Negative Declaration LDR NO. 33120 satisfactory to the City Manager and the City Engineer. All MMRP requirements shall be shown on the construction plans and specifications. Prior to the issuance of Notice to Proceed with construction, all conditions of the MMRP shall be adhered to to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Archaeological Resources and Biological Resources

15. A Job Order number open to the Land Development Review Division of the Development Services Department shall be required to cover the Land Development Review Division's cost associated with the implementation of the MMRP.

PLANNING/DESIGN REQUIREMENTS:

16. 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.

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. The construction installation method shall be pipe bursting.

INFORMATION ONLY:

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

APPROVED by the Planning Commission of the City of San Diego on April 6, 2006 and Resolution No. 3989-PC.

ALL-PURPOSE CERTIFICATE

Site Development Permit No. 87992

Date of Approval: April 6, 2006

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Vena Lewis, Development Project Manager

On _____ before me, Raquel Herrera, (Notary Public), personally appeared Vena Lewis, Development Project Manager of the Development Services Department of the City of San Diego, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Signature _____
Raquel Herrera

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed _____ Signed _____
Typed Name Typed Name

STATE OF _____
COUNTY OF _____

On _____ before me, _____ (Name of Notary Public) personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Passed by the Council of The City of San Diego on JUL 24 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 24 2006

AUTHENTICATED BY:

(Seal)

JERRY SANDERS
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Manuel E. Ketchum, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R - 301671