

RESOLUTION NUMBER R-302311

DATE OF FINAL PASSAGE JANUARY 23, 2007

WHEREAS, Matthew S. and Nancy A. Browar, Trustees of the M.S. Browar Family Trust, Owner/Permittee, filed an application with the City of San Diego for a coastal development permit to convert sixteen existing residential units to condominiums to be known as the 363 Playa Del Sur TM project, located at 363 Playa Del Sur, and legally described as Lots 26 and 27, Block 5, La Jolla Strand, Map No. 1216, in Zone 4 of the La Jolla Planned District within the boundaries of the La Jolla Community Plan area, in the Coastal Overlay Zone (non-appealable area), and the Coastal Height Limit Overlay Zone; and

WHEREAS, on November 2, 2006, the Planning Commission of the City of San Diego considered Coastal Development Permit [CDP] No. 246500, and pursuant to Resolution No. 4167-1-PC voted to deny the Permit; and

WHEREAS, Scott Peters appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, under 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 where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on January 23, 2007, 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 Coastal Development Permit No. 246500:

**A. COASTAL DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE
[SDMC] SECTION 126.0708**

1. The proposed coastal development will not encroach upon any existing physical access way that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan. The 6,170 square-foot site is residentially zoned and is located on the south side of Playa Del Sur at the intersection of La Jolla Boulevard with an alleyway accessing the rear of the site and provides access to two off-street parking spaces. The 3-story structure was constructed in 1968 and complied with City requirements at that time. The adjoining streets and alley are fully improved and sidewalks provide for pedestrian access through the neighborhood and to the coastal resources of the Pacific Ocean located two blocks to the west. The site is within a fully developed residential neighborhood with commercial uses located along La Jolla Boulevard. This project is for a change of ownership only and no actions would result in any encroachment upon any existing physical accessway legally used by the public or proposed for access in the Local Coastal Program land use plan and, this project will not change any existing condition relative to public views to and along the ocean and other scenic coastal areas as identified in the plan.

2. The proposed coastal development will not adversely affect environmentally sensitive lands. There are no environmentally sensitive lands within or on the adjacent properties and the change of ownership proposed to condominiums will not adversely affect any environmentally sensitive lands. The project is “exempt” from the California Environmental Quality Act [CEQA] as the development is an “existing facility.”

3. The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program. The subject 6,170 square-foot site is in Zone 4 of the La Jolla Planned District within the La Jolla Community Plan area. The site is within a fully improved neighborhood. The requested action, to permit a change in ownership only to enable the sixteen existing residential dwelling units to be sold as condominiums, is in conformity with the certified Local Coastal Program land use plan (the development was constructed in 1968, and has existed as a residential use since that time).

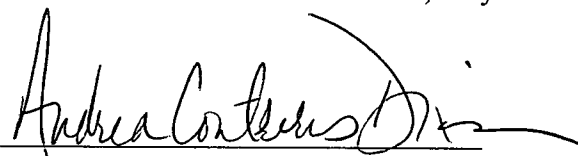
4. For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act. The project site, addressed as 363 Playa Del Sur, is two blocks easterly of the Pacific Ocean and the site is not between the nearest public road and the sea or any other body of water located within the coastal zone and the project, which is a change in ownership of sixteen existing residential

dwelling units to condominiums, is in conformity to the public access and public recreation policies of Chapter 3 of the California Coastal Act.

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

BE IT FURTHER RESOLVED, that the appeal of Scott Peters is granted, the decision of the Planning Commission is overruled, and Coastal Development Permit No. 246500 is granted to Matthew S. and Nancy A. Browar, Trustees of the M.S. Browar Family Trust, 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 
Andrea Contreras Dixon
Deputy City Attorney

ACD:pev
02/09/07
Or.Dept:Clerk
R-2007-772
MMS #4356

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

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 42-4902

COASTAL DEVELOPMENT PERMIT NO. 246500
363 PLAYA DEL SUR TM – PROJECT NO. 78405
CITY COUNCIL

This Coastal Development Permit is granted by the City Council of the City of San Diego to Matthew S. and Nancy A. Browar, Trustees of the M.S. Browar Family Trust, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0701. The 6,170 square-foot site is located at 363 Playa Del Sur in Zone 4 of the La Jolla Planned District within the boundaries of the La Jolla Community Plan, Coastal Overlay Zone (non-appealable area), and the Coastal Height Limit Overlay Zone. The project site is legally described as Lots 26 and 27, Block 5, La Jolla Strand, Map No. 1216.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to convert sixteen existing residential units to condominiums, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 23, 2007, on file in the Development Services Department.

The project or facility shall include:

- a. Maintaining sixteen existing multi-family residential dwelling units in two, 3-story buildings under condominium ownership;
- b. Landscaping (existing planting, irrigation and landscape related improvements);
- c. Maintaining four off-street parking spaces accessed off the abutting alley;
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 SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Conversion of the existing dwelling units to condominium ownership 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. 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.

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.

9. This Permit shall become effective with recordation of the corresponding final subdivision map for and approval of the project site.

10. This Coastal Development Permit shall become effective on the eleventh working day following receipt by the California Coastal Commission of the Notice of Final Action following all appeals.

AFFORDABLE HOUSING REQUIREMENTS:

11. Prior to the issuance of any building permits, the developer shall comply with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code).

ENGINEERING REQUIREMENTS:

12. This Coastal Development Permit shall conform to the provisions of Tentative Map No. 243557.

PLANNING/DESIGN REQUIREMENTS:

13. No fewer than four existing off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." 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.

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 City Council of the City of San Diego on January 23, 2007 by Resolution No. 302311.

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.

MATTHEW S. BROWAR, Trustee of the
Browar Family Trust
Owner/Permittee

By _____

NANCY A. BROWAR, Trustee of the
Browar Family Trust
Owner/Permittee

By _____

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

PERMIT/OTHER – Permit Shell 11-01-04