

RESOLUTION NUMBER R- 305409

DATE OF FINAL PASSAGE NOV 10 2009

A RESOLUTION APPROVING PLANNED DEVELOPMENT PERMIT NO. 571238 AND SITE DEVELOPMENT PERMIT NO. 697691 AND RESCINDING SITE DEVELOPMENT PERMIT NO. 153465 FOR THE ERMA ROAD PROJECT NO. 137944.

WHEREAS, H.G. Fenton Development Company LLC, a California Limited Liability Company, Owner/Permitee, filed an application with the City of San Diego for a planned development permit and site development permit for the construction of a 95-unit residential condominium development project, known as the Erma Road project, on one 3.92-acre parcel located at 9889 Erma Road, and legally described as Parcel 2 of Parcel Map No. 10259, in the Scripps Miramar Ranch Community Plan area, in the CO-1-2 zone which is proposed to be rezoned to the RM-2-5 zone, and within the Airport Influence Area for the Marine Corps Air Station [MCAS] Miramar, Federal Aviation Administration [FAA] Part 77 Noticing Area for the MCAS Miramar, and Residential Tandem Parking Overlay Area; and

WHEREAS, on September 17, 2009, the Planning Commission of the City of San Diego considered the Erma Road Project 137944, and pursuant to Resolution No. 4542-PC, voted to recommend approval; 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, a public hearing is required by law implicating due process rights of individuals affected by the decision, and the Council is 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 NOV 10 2009, 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 Planned Development Permit No. 571238:

**A. PLANNED DEVELOPMENT PERMIT- SAN DIEGO MUNICIPAL CODE  
[SDMC] SECTION 126.0604**

**1. The proposed development will not adversely affect the applicable land use plan.** The proposed community plan amendment would include a re-designation of an approximately 3.92-acre site from Commercial-Professional Office to High-Medium Density Residential (15-29 dwelling units per acre). Based on this designation, the site could accommodate between 60-114 dwelling units. The accompanying development project is proposing to construct ninety-five dwelling units. The proposed development project includes a number of conditions that implement major General Plan Goals addressing sustainability, including: solar energy utilization to heat the pool and spa; permeable pavers along the drive aisle and fire department turnaround; electric vehicle charging stations; high efficiency laundry machines; low-flow water fixtures; synthetic turf to reduce water consumption; drought tolerant landscaping; qualifies for Leadership in Energy and Environmental Design [LEED] Certification; and many other features. The Scripps Miramar Ranch Community Plan's policies and goals are also addressed through sustainability features, building treatments, and site design. These policies and goals include: promoting a variety of housing types and prices throughout the community; encourage high standards of design, materials and workmanship in construction; and encourage and facilitate the use of public transit, carpools and bicycles within and outside the community. The proposed development will not adversely affect the applicable land use plans.

**2. The proposed development will not be detrimental to the public health, safety, and welfare.** The Erma Road development project proposes to construct ninety-five residential condominium dwelling units on a vacant 3.92-acre parcel, including on-site parking facilities, a leasing facility, a fitness facility and an outdoor pool and recreation area. Mitigated Negative Declaration [MND] No. 137944 has been prepared for the project in accordance with State of California Environmental Quality Act [CEQA] guidelines, which addresses potential impacts to Biological Resources, Public Utilities (Solid Waste Generation/Disposal) and Noise. A Mitigation, Monitoring, and Reporting Program (MMRP) will be implemented with this project to reduce the potential impacts to a level below significance. This Planned Development Permit No. 571238 and the associated Vesting Tentative Map No. 571214 for the project includes various conditions and referenced exhibits of approval relevant to achieving compliance with the applicable regulations of the Land Development Code in effect for the design of this subdivision and

related improvements. Additionally, prior to the issuance of any building, grading or public improvement permits, all construction plans must comply with all relevant and applicable subdivision, engineering, building, electrical, mechanical and fire codes to assure the structures will meet or exceed the current regulations. As such, the proposed development will not be detrimental to the public health, safety, and welfare.

**3. The proposed development will comply with the regulations of the Land Development Code.** The Erma Road development project proposes to construct ninety-five residential condominium dwelling units within twelve 3-story building complexes totaling approximately 112,786 square feet, on a vacant 3.92-acre parcel. The project includes on-site parking facilities for 235 vehicles, a leasing facility, a fitness facility, an outdoor pool and recreation area. The proposed development complies with the regulations of the underlying RM-2-5 zone and site-specific development regulations for the property; excepting deviations proposed for front yard setback, side yard setback and wall heights. Deviations, as allowed by the approval of a planned development permit, are as follows:

- **Front Yard Setback:** Allowing a deviation to observe an 11'-3" minimum front yard setback where 15'-0" is required and to allow 65 percent of the building to observe the 15'-0" standard setback where a maximum of 50 percent is permitted.
- **Interior Side Yard Setback:** Allowing a deviation for a 15'-11" to 23'-6" west interior side yard setback and a 16'-2" to 26'-9" east interior side setback where 28'-10" is required.
- **Wall Height:** Allowing a deviation for a maximum 23'-0" high combination retaining wall and fence (a maximum 18'-0" high retaining wall with a maximum 5-foot high, free standing noise wall above portions of the retaining wall), where a 12'-0" is permitted outside of all setback areas; a 5'-6" to 9'-6" high retaining wall within the front setback where a 3'-0" high wall is permitted; and, a 7'-0" high retaining wall within the east interior side setback where 6'-0" high is permitted.

The Land Development Code (Section 126.0602(b)(1)) allows deviations to be considered through the planned development permit process. Excepting the noted deviations, the proposed development complies with all other relevant regulations of the Land Development Code. Specific conditions of approval require the continued compliance with all relevant regulations in effect for this site and have been written as such into Planned Development Permit No. 571238. Development of the property will meet all other regulations. The proposed project will comply with the applicable and relevant regulations of the Land Development Code, as allowed through the approval of Planned Development Permit No. 571238.

**4. The proposed development, when considered as a whole, will be beneficial to the community.** The Erma Road development project proposes to construct ninety-five residential condominium dwelling units within twelve 3-story building complexes totaling approximately 112,786 square feet, on a vacant 3.92-acre parcel. The project will

provide several significant features, amenities and improvements in the community. The project will provide ninety-five condominium housing units into the housing stock of the City of San Diego at a time in the history of the city when there is a housing shortage. The overall development design for the Erma Road project is comprehensive, taking into consideration the bulk, scale and character of neighboring uses and development. The project site is comprised of buildings that are designed to integrate into the community and topography. The site is currently a completely graded vacant lot. Development will not disturb any sensitive resources or destroy any natural topography. To respect the stepped form of the topography, the building heights are set in such a way that result in varied elevations between the roofs of the project site and adjacent uses. The development has been broken into smaller structures to avoid monotonous repetition of development patterns as opposed to one large single building. Rooflines will be articulated with varying height pitches and overhangs, and roof and building materials will complement each other with natural tones utilized to blend with the natural environment. Project landscaping has been designed to soften the appearance of blank spaces in walls, screen retaining walls, vegetative slopes, and will help to define the building edges creating a more pedestrian-oriented experience for residents and community members. Streetscape planting on Erma Road will provide a buffer to pedestrians from the street and create a visually enhanced pedestrian walkway.

The project will include sustainable features and will potentially encourage similar development and redevelopment in the community. Sustainable design features included in the project include the use of sustainable construction materials and practices, such as environmentally efficient plywood for shear walls, floors, and roof sheathing, energy conserving windows, low flow water features, and fluorescent lighting. Operational sustainable features include the use of reclaimed water for landscape, drought tolerant and native plant materials, natural storm water filtration via planting areas, and a solar-heated common pool. Permeable pavers or other materials will be used in drive aisles to demark pedestrian pathways and function as water quality features for storm water runoff. An electric vehicle charging station will be provided in each garage for electric car use. All units will include natural cross ventilation, and 75 percent of occupied space will utilize natural light.

Therefore, the development when considered as a whole will be beneficial to the community.

**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.** The Erma Road development project proposes to construct ninety-five residential condominium dwelling units within twelve 3-story building complexes totaling approximately 112,786 square feet, on a vacant 3.92-acre parcel. The project includes three deviations, all of which 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 underlying RM-2-5 zone. The deviations would allow

encroachments into the front and interior side yards for portions of the buildings, and over height walls around the perimeter of the site.

The purpose of the Planned Development Permit is to provide flexibility in the application of development regulations for projects where strict application of the base zone regulations would result in a less desirable project. The intent of the regulations is to accommodate to the greatest extent possible, an equitable balance of development types, intensities, styles, site constraints, project amenities, public improvements, community and City benefits.

The Planned District Ordinance states the following:

The PDP contains additional development regulations which outline density limitations, open space requirements and traffic circulation requirements. The number of units allowed in the zone shall not exceed that within the land use plan and the zone. Total open space areas must be provided at 190 square feet per dwelling unit or 18,050 square feet for the proposed development. The proposed development is providing 41,364 square feet of open space. For developments proposing 10 or more dwelling units, one additional recreational amenity must be provided such as a pool, barbeque area or shade structure. The project proposes a swimming pool, spa, and fitness center, exceeding the requirements of the Land Development Code. Parking areas and access drives should be located to avoid conflicts with internal pedestrian systems and adjacent properties. The project proposes a single driveway to access garage courtyards which are designed with decorative paving in order to differentiate their function from other walkways and drive aisles on the site, alerting pedestrians to the potential presence of automobiles. The project entry driveway is located at least 100 feet from the project's west and east boundaries, providing ample space between the project and existing developments so as to not impede their entries or traffic flow.

Minor deviations to the zone development regulations have been incorporated into the project design as noted below:

1. The RM-2-5 zone requires a minimum and a standard front yard setback of 15'-0" and 20'-0" respectively. The requirement further states that no more than 50 percent of the building may observe the 15'-0" minimum front setback while the remaining 50 percent must observe the 20'-0" standard front setback. The project proposes two buildings fronting on Erma Road with a combined building wall length of 187'-6". Applying the required front yard setback, 93.75 feet must observe the required 15'-0" setback while the remaining 93.75 feet may observe a 20'-0" setback. The project is requesting a deviation in the front yard setback requirement resulting in 65.7 feet of frontage observing a 20'-0" setback (or 65 percent of the total building frontage) and 121.75 feet observing a 15'-0" setback (or 35 percent of the total building frontage). In summary, the front yard deviation would allow an encroachment into the minimum front yard of 11'-3" at the closest point where 15'-0" is required, and allow 65 percent of the building wall observing the 20'-0" setback where a maximum of 50 percent is allowed.

2. The RM-2-5 zone requires a 28'-10" interior side setback for this site calculated at 10 percent of the width of the lot. The project proposes to allow two of the structures on the east side of the property to observe varying setbacks of 16'-2" to 26'-9" at the closest point. On the western boundary, a varying setback of 15'-11" to 23'-6" setback is proposed for all of the structures.

3. The project requires the construction of retaining walls around the perimeter of the property and continuing around the northeast and northwest corners at the front of the site within the front setback area. The majority of the retaining wall will range in height from 1'-0" to 5'-6" where 3'-0" is allowed. A small portion of the retaining wall at the northeast corner would be 9'-6" in height. This wall is below street grade and supports the slope adjacent to Erma Road to create a pedestrian walkway adjacent to the buildings. Additionally, a 7'-0" high retaining wall is proposed within the east interior side setback where 6'-0" is the maximum allowed. Additionally, a 7'-0" high retaining wall is proposed within the east interior side yard where 6'-0" is allowed. Reference Attachment 19, Sections C-C and D-D of the Landscape Concept Plan, sheet 22 of 24.

4. A maximum 18'-0" high retaining wall is proposed within the rear of the site, outside of the setback area. Noise attenuation measures require a 3'-0" to 5'-0" high barrier above a portion of this wall located around the outdoor recreation area, resulting in an overall height of 23'-0". The noise attenuation barrier is proposed to be clear glass or Plexiglas. The fence regulations limit wall heights to 12'-0" outside of the setback. The total length of this wall at the rear is 290 linear feet. Eighty linear feet will exceed the height limit. Reference Attachment 19, Section B-B and Perspectives A and B of the Landscape Concept Plan (sheet 22 of 24).

The property contains unusual circumstances that are not of the making of the applicant. The site is elongated and narrow in shape. The majority of the graded site is level with street grade however the site's south, east and west slopes contain varying topographic conditions. The project is an infill development located adjacent to established land uses including 2-story multi-family to the east and across Erma Road to the north, one and 3-story commercial uses to the west, and a multi-level hotel use and commercial retail center to the south. The multi-family developments to the east are approximately 16'-0" and 2'-0" higher in grade than the subject site. The commercial uses to the south are approximately 52'-0" lower in grade than the subject site. The commercial uses to the west are approximately 28'-0" lower in grade.

The encroachments into the front yard area for portions of the building allowing a minimum 11'-3" front yard where 15'-0" is required for a maximum of 50 percent of the building wall and, encroachments into the required 28'-10" west and east interior side yards are mitigated by various measures. The project was designed to be Pedestrian-oriented with front facades providing building offsets and varying color schemes, windows, doors and balconies facing the street. The buildings have been sited to be offset, not parallel to, the front property lines to promote visual interest and walk ability along the streetscape. Siting the buildings closer to the street reduces the amount of grading required in the fill slopes at the rear. Side yard encroachments are mitigated by

the offset building designs and by the topography of the site which creates a natural buffer from the adjoining multi-family development to the east and the commercial development to the west. These properties have varying pad elevations in relation to the subject property which further serves to mitigate for the encroachment of the buildings. These adjacent developments also have open surface parking areas adjacent to the subject property which provides an additional buffer.

Implementation of the project requires the construction of a series of retaining walls along the perimeter to stabilize slopes, support the development pad, and to create pedestrian connections throughout the site. The over height retaining wall along the front extends to a height of 9'-6" where 3'-0" is allowed, however, the majority of this wall is below street grade, rendering the over height condition visible only when viewed on-site. The wall is necessary to maintain the slope adjacent to Erma Road and facilitates the construction of a pedestrian walkway in front of the buildings. This retaining wall would be constructed of natural-tone split face block with cascading vines for screening. The wall also serves to buffer the residents walking along the perimeter of the development from the traffic on Erma Road.

A maximum 18'-0" high retaining wall is proposed within the rear portion of the property. Portions of this wall are required to have a 3'-0" to 5'-0" noise attention barrier resulting in a maximum height of 23 linear feet exceeding the 12'-0" allowable height limit. This area of the site contains extreme topographic conditions with slopes descending to approximately 52'-0" from the building pad elevation to the commercial development to the south. The slope currently contains mature eucalyptus trees, shrubs and ground cover. The top of the retaining wall will be at-grade with the project site, and the bottom of the retaining wall will originate mid-way up the existing slope that elevationally separates the existing uses to the south and the Erma Road project area. Additionally, the retaining wall will be curved, providing relief and definition and avoiding a straight line wall effect. Similar to other proposed retaining walls, this wall will be landscaped to screen it from the existing uses adding visual interest to the slope on the south side of the project site. Clinging vines will be planted along the retaining wall which will be constructed of split face block in a natural tone consistent with the other retaining walls on-site. Additionally, dense slope plantings will be utilized to screen the wall.

The Planned Development Permit ordinance contains criteria for development design to evaluate proposed development in conjunction with the required findings. The project incorporates each of these measures as summarized below:

1. Development design should be comprehensive and should demonstrate the relationships of the development on site with off-site developments. The overall development design for the Erma Road project is comprehensive, taking into mind the bulk, scale and character of neighboring uses and development. The project fits into the existing multi-family character that surrounds it to the east, southeast, and north. The building height has been limited to a height that is consistent and complementary to surrounding low rise residential buildings. Because the project will be developed as two

stories of residential over a parking garage, the actual dwelling unit type is consistent with the two-story character of the neighborhood.

2. The scale of the project should be consistent with the dominant neighborhood. The project site is comprised of twelve buildings designed to integrate into the community and topography. The site is currently a graded vacant lot and no disturbance of native vegetation or environmental resources will occur. The two-story residential development with one story, tuck-under parking is consistent with other developments in the area.

3. Projects should avoid repetitious development patterns that are inconsistent with the goals of the land use plan and should reduce the appearance of actual or apparent bulk. Buildings should be well integrated into, oriented towards and relate to the topographic features of the site. The project buildings will avoid monotonous repetition of development patterns by using multiple buildings rather than one large structure. The roofline of the project will be articulated with varying heights, pitches, and overhangs. Space between buildings as well as garage access courtyards also serve to break up the building mass and add visual interest and interactivity. Roof and building materials will complement each other. Natural tones will be utilized to blend with the natural environment.

4. Landscaping should be use to the greatest extent possible to soften the appearance of blank walls and buildings edges. Excess landscaped areas are provided to soften the appearance of blank spaces in walls and to screen retaining walls and vegetative slopes. Streetscape planting will be utilized to provide a buffer from the street and to create a pleasant pedestrian walkway. The mature eucalyptus trees located on the western side of the property will be preserved to the extent feasible, protecting the grove-like tree character indicative of Scripps Ranch. Additionally, new plantings will include eucalyptus and other approved tree and plant species from the Scripps Miramar Ranch Community Plan, so as to be cohesive and supportive of the established community character.

The proposed deviations to the setback and retaining wall regulations are minor in scope and will be mitigated through the use of additional site design features. The site contains unique circumstances not of the making of the applicant which impose design constraints. Project implementation requires traffic improvements at the intersection of Mira Mesa Boulevard and within the public right-of-way. The deviations will facilitate new residential development consistent with the currently allowed density range of the community plan, thereby providing additional housing stock for the community in a quality residential development that exceeds the minimum open space requirements, provides for enclosed parking for the residents and project amenities. Staff analysis is that the requested minor deviations are consistent with the PDP regulations and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the zone. The project provides amenities, public improvements, community and City benefits. The proposed project, including noted deviations, conforms to the overall policies, regulations and purpose and intent of the Planned Development regulations. The design will result in a more desirable



project for the City and the community than would be realized through the strict application of the development regulations at this location.

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

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Site Development Permit No. 697691:

**B. SITE DEVELOPMENT PERMIT SAN DIEGO MUNICIPAL CODE  
[SDMC] SECTION 126.0504**

**1. The proposed development will not adversely affect the applicable land use plan.** The project requires a Site Development Permit to allow the encroachment of two private 12-inch storm drains within the Erma Road public right-of-way. The proposed Community Plan Amendment would re-designate the site from Commercial to Residential within the Scripps Miramar Ranch Community Plan. The placement of private storm drains within the public right-of-way is not addressed with the community plan therefore the encroachment 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 project requires a Site Development Permit to allow the encroachment of two private 12-inch storm drains within the Erma Road public right-of-way. The storm drain lines would be located underground and would facilitate drainage from the site. Pedestrian and vehicular use of the public right-of-way would not be inhibited. The placement of the storm drains facilitates orderly development and avoids increased public maintenance costs, by avoiding the construction of additional public storm drain facilities within the Erma Road public right-of-way. Therefore, the proposed development will not be detrimental to the public health, safety and welfare.

**3. The proposed development will comply with the regulations of the Land Development Code.** The project requires a Site Development Permit to allow the encroachment of two private 12-inch storm drains within the Erma Road public right-of-way. The proposed encroachment is permitted with the public right-of-way with an approved Site Development Permit. The development complies with the applicable regulations of the Land Development Code.

**C. SITE DEVELOPMENT PERMIT SAN DIEGO MUNICIPAL CODE  
[SDMC] SECTION 126.0604, Supplemental Findings – Public Right-of-Way Encroachments**

**1. The proposed encroachment is reasonably related to public travel, or benefits a public purpose, or all record owners have given the applicant written permission to maintain the encroachment on their property.** The encroachment of

private storm drain lines are reasonably related to public travel as they connect to an existing underground storm drain pipe. By allowing the encroachment, surface drainage related impacts to pedestrians and vehicular traffic will be reduced.

**2. The proposed encroachment does not interfere with the free and unobstructed use of the public right-of-way for public travel.** The encroachment of private storm drain lines would not interfere with the free and unobstructed use of the public right-of-way for public travel as they will be located underground.

**3. The proposed encroachment will not adversely affect the aesthetic character of the community.** The encroachment of private storm drain lines would not adversely affect the aesthetic character of the community as they will be located underground.

**4. The proposed encroachment does not violate any other Municipal Code provisions or other local, state, or federal law.** The encroachment of private storm drain lines is permitted within the public right-of-way with an approved Site Development Permit. The proposed encroachment would not violate any other Municipal Code provisions or any other local, state, or federal laws.

**5. For coastal development in the coastal overlay zone, the encroachment is consistent with Land Development Code Section 132.0403 (Supplemental Use Regulations of the Coastal Overlay Zone).** The encroachment is not located within the coastal overlay zone.

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 Planned Development Permit No. 571238 and Site Development Permit No. 697691 is granted to H.G. Fenton Development Company, LLC, Owner/Permitee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

BE IT FURTHER RESOLVED, that Site Development Permit No. 153465 is hereby canceled in accordance with San Diego Municipal Code section 126.0110(a).

APPROVED: JAN I. GOLDSMITH, City Attorney

By           7-1-            
Nina M. Fain  
Deputy City Attorney

NMF:js  
10/07/09  
10/30/09 Cor. Copy  
12/17/09 Rev. Copy  
Or. Dept: DSD  
R-2010-251  
MMS #10523

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
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: 42-8373

**PLANNED DEVELOPMENT PERMIT NO. 571238**  
**SITE DEVELOPMENT PERMIT NO. 697691**  
**ERMA ROAD - PROJECT NO. 137944**  
**[MMRP]**  
**CITY COUNCIL**

This Planned Development Permit No. 571238/Site Development Permit No. 69569 is granted by the City Council of the City of San Diego to H.G. Fenton Development Company, LLC, a California Limited Liability Company, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] Sections 126.0504 and 126.0604. The 3.92-acre site is located at 9889 Erma Road in the in the proposed RM-2-5 Zone (current zone is CO-1-2), the Airport Influence Area for the Marine Corps Air Station [MCAS] Miramar, Federal Aviation Administration [FAA] Part 77 Noticing Area for the MCAS Miramar, and Residential Tandem Parking Overlay Area, within the Scripps Miramar Ranch Community Planning area. The project site is legally described as Parcel 2 of Parcel Map 10259.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to construct ninety-five residential condominium units, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated NOV 10, 2009, on file in the Development Services Department.

The project or facility shall include:

- a. A multi-family development consisting of 95 residential condominium units within twelve (12) three-story building complexes totaling approximately 112,786 square feet, on-site parking facilities, a leasing facility, a fitness facility and an outdoor pool and recreation area;
- b. Deviations to the Land Development Code as follows:

- Front Yard Setback: Allowing a deviation to observe an 11'-3" minimum front yard setback where 15'-0" is required and to allow 65 percent of the building to observe the 11'-3" to 15'-0" minimum setback where a maximum of 50 percent is permitted.
  - Interior Side Yard Setback: Allowing a deviation for a 15'-11" to 23'-6" west interior side yard setback and a 16'-2" to 26'-9" east interior side setback where 28'-10" is required.
  - Wall Height: Allowing a deviation for a maximum 23'-0" high combination retaining wall and fence( a maximum 18'-0" high retaining wall with a maximum 5 foot high, free standing noise wall above portions of the retaining wall), where a 12'-0" is permitted outside of all setback areas; a 5'-6" to 9'-6" high retaining wall within the front setback where 3'-0" high wall is permitted; and, a 7'-0" high retaining wall within the east interior side setback where 6'-0" high is permitted.
- c. Landscaping (planting, irrigation and landscape related improvements);
  - d. Off-street parking facilities to accommodate 235 vehicles;
  - 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;
  - f. Approval of this Planned Development Permit No. 571238/Site Development Permit 697691 rescinds Vesting Tentative Map No. 178023 and cancels Site Development Permit No. 153465.
  - g. A Site Development Permit to allow encroachment of private storm drains in public right-of-way.

**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. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor(s) in interest. Any successor(s) in interest shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The initial and continued utilization and 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], as amended (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. In order to secure necessary permits, the Owner/Permittee may be required to complete substantial modifications to the building and site improvements to comply with applicable laws for building, fire, mechanical, plumbing, and disability access requirements.
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." 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 were considered and determined to be necessary to make the findings required for this Permit. The holder of this Permit shall 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.

10. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs,

including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

11. At all bus stops within the project area, if any, the applicant shall install sidewalk improvements to comply with the Americans with Disability Act [ADA] requirements and the City of San Diego Street Design Manual standards.

**ENGINEERING REQUIREMENTS:**

12. This Planned Development Permit shall comply with the conditions of the Vesting Tentative Map No. 571214.

13. Prior to the final occupancy, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP's] maintenance.

14. Prior to the issuance of a construction permit, the Owner/Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

15. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate any construction [BMP's] necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

16. Prior to the issuance of any construction permits, the Owner/Permittee shall incorporate and show the type and location of all post-construction [BMP's] on the final construction drawings, in accordance with the approved Water Quality Technical Report.

17. The drainage system proposed for this development is private and subject to approval by the City Engineer.

18. All driveways and curb openings shall comply with City Standard Drawings G-14A, G-16 and SDG-100.

19. Prior to building occupancy, the applicant shall obtain an Encroachment Maintenance and Removal Agreement, for a portion of the private 18" RCP drainage pipe within the public right-of-way.

20. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent [NOI] shall be filed with the SWRCB.

21. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99-08 DWQ.

**ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

22. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into Planned Development Permit No. 571238 by reference.

23. The mitigation measures specified in the MMRP, and outlined in Mitigated Negative Declaration No. 137944, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

24. The Owner/Permittee shall comply with the MMRP as specified in MND No. 137944, satisfactory to the Development Services Department and the City Engineer. Prior to issuance of the first grading permit, the Owner/Permittee shall adhere to all MMRP requirements, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following:

- Biological Resources
- Public Utilities (Solid Waste Generation/Disposal)
- Noise

25. Prior to issuance of any construction permit, the Owner/Permittee 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.



## **LANDSCAPE REQUIREMENTS:**

26. An Encroachment Maintenance and Removal Agreement will be required for the landscape maintenance within the public right-of-way.
27. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land 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 this permit (including Environmental conditions) and Exhibit "A."
28. Prior to issuance of any engineering permits for public 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 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.
29. If the Owner/Permittee requests a foundation only permit, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Development Plan. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as "landscaping area."
30. Prior to issuance of any construction permits for structures, complete Landscape Planting and Irrigation Construction documents consistent with the Landscape Standards shall be submitted to the City Manager for approval. The Landscape Construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan. Construction plans shall take into account a 40-square-foot area around each tree which is unencumbered by hardscape and utilities as set forth under Land Development Code section 142.0403(b)5.
31. Prior to issuance of a Certificate of Occupancy or the performance of a Final Inspection, the Owner/Permittee shall 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.
32. 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.
33. If any required landscape (including existing or new plantings, hardscape, or other features) 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 thirty days of damage and prior to issuance of a Certificate of Occupancy.
34. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements in the public right-of-way consistent with the Landscape Standards unless long-term maintenance of said landscaping will be ensured through an executed Landscape Establishment Maintenance Agreement. The Owner/Permittee shall submit any Landscape

Establishment Maintenance Agreement application form to a Landscape Planner for the City of San Diego for review and approval prior to final execution by the Owner/Permittee and City.

**TRANSPORTATION REQUIREMENTS**

35. No fewer than 235 automobile parking spaces (where 235 are required), including all disabled accessible spaces and a minimum of 5 motorcycle spaces, shall be permanently maintained on-site within the approximate location shown on the project's Exhibit "A."

36. All on-site parking spaces and aisle widths shall comply with the City's Land Development Code requirements, and shall not be converted or utilized for any other purpose, unless authorized by the appropriate City decision maker.

37. A minimum of one on-site loading area shall be permanently maintained on the site within the approximate location shown on the project's Exhibit "A." The required loading area shall comply with all Land Development Code requirements, and shall not be converted or utilized for any other purpose, unless authorized by the appropriate City decision maker.

38. Prior to the issuance of the first construction permit, the Owner/Permittee shall pay 50 percent of the cost not to exceed \$60,000 for improvements at the intersection of Scripps Ranch Boulevard and Erma Road. The improvements at the intersection shall include a 2 foot widening of the existing public right-of-way on the southwest corner, relocation of existing utilities, modification of the traffic signal, removal of the existing median on the north leg of the intersection, repair to the existing pavement, and restriping of the road to accommodate a northbound u-turn. Additional improvements at the intersection shall include the replacement of the existing video detection camera on the east leg of the intersection (for the westbound approach) and the installation of a "No Turn on Red" (R10-11) sign on the west leg of the intersection (for the eastbound approach), satisfactory to the City Engineer.

**PLANNING/DESIGN REQUIREMENTS:**

39. 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.

40. 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.

41. 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 regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.
42. 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.
43. All signs associated with this development shall be consistent with the citywide sign regulations.
44. The Owner/Permittee shall post a copy of approved Planned Development Permit No. 571238 and associated Vesting Tentative Map No. 571214 in the sales office for consideration by each prospective buyer.
45. Prior to the issuance of any construction permits, complete outdoor lighting information shall be submitted to the Development Services Department, Land Development Review Division, for review and approval. Complete lighting information shall include a plan view photometric analysis indicating an isofoot candle plot and a point by point plot to include all areas within the private property and to extend a minimum of 50 feet beyond the property line, construction details as necessary to direct installation of the outdoor lighting system, manufacturers name, visors, prisms, lenses and reflectors and a lighting plan locating each fixture in plan view and a legend. The outdoor lighting system shall be designed, manufactured and installed to allow shading, adjusting, and shielding of the light source so all outdoor lighting is directed to fall only onto the same premises as light sources are located.
46. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the Municipal Code.
47. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
48. 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 six feet in height. Merchandise, material or equipment shall not be stored or stacked higher than any adjacent wall.
49. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, mechanical ventilator, or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed, architecturally integrated structure whose top and sides may include grillwork, louvers, and latticework.

50. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (SDMC) 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."

**WASTEWATER REQUIREMENTS:**

51. All on-site sewer facilities shall be private.

52. Prior to the issuance of any certificate of occupancy, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement for all private utilities installed in or over the public sewer easement.

53. Prior to the issuance of any engineering or construction permits, the Owner/Permittee shall provide evidence, satisfactory to the Director of Public Utilities, indicating that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of onsite private sewer mains that serve more than one ownership.

54. The Owner/Permittee shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guidelines.

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

56. The Owner/Permittee shall not install trees or shrubs that would exceed 3 feet in height at maturity within 10 feet of any sewer laterals.

57. Prior to the issuance of any construction permit, the subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP's maintenance.

58. Prior to the issuance of any construction permit, the subdivider shall incorporate any construction BMP's necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

59. Prior to the issuance of any construction permit the subdivider shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report.

**WATER REQUIREMENTS:**

60. Prior to the issuance of any certificates of occupancy the Subdivider shall assure, by permit and bond the design and construction of private sub-meter water for each condominium unit in a manner satisfactory to the Director of Public Utilities and the City Engineer..

**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.
- This project is subject to payment of Facilities Benefit Assessment [FBA] fees at the time of construction permit issuance.

APPROVED by the Council of the City of San Diego on NOV 10, 2009 by Resolution No. R- 305409

AUTHENTICATED BY THE CITY MANAGER

By \_\_\_\_\_

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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 DEVELOPMENT COMPANY, LLC  
Owner/Permittee

By \_\_\_\_\_

By \_\_\_\_\_

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