

RESOLUTION NUMBER R- 306773

DATE OF FINAL PASSAGE APR 19 2011

A RESOLUTION APPROVING COASTAL DEVELOPMENT  
PERMIT NO. 619980 FOR THE FLOWER HILL PROMENADE  
PROJECT NO. 172026

WHEREAS, Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owners/Permittees, filed an application with the City of San Diego for Coastal Development Permit [CDP] No. 619980 to demolish the existing 14,000 square-foot theater, construct approximately 74,995 square feet of new building area for commercial, office, and storage space area, and a new 82,739 square-foot parking structure at an existing commercial development known as the Flower Hill Promenade Project [Project], at 2720 Via de la Valle, and legally described as Parcel 1 and 2 of Parcel Map No. 20470 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, April 17, 2008, in the City of San Diego General Plan and North City Local Coastal Program Land Use Plan areas, in the CC-1-3 and Coastal Overlay (non-appealable) zones; and

WHEREAS, on March 10, 2011, the Planning Commission of the City of San Diego considered CDP No. 619980, and pursuant to Resolution No. 4682-PC voted to recommend City Council approval of the permit with certain conditions; 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 was required by law implicating due process rights of individuals affected by the

decision, and 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 April 19, 2011, 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. 619980:

**A. COASTAL DEVELOPMENT PERMIT - 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 proposed development is located approximately one mile from the ocean. Therefore, it does not encroach upon any existing or proposed physical accessway used by the public to reach the shore. The project site is currently developed with an existing shopping center. The proposed project would expand and reconfigure the shopping center to include 74,995 square feet of new building area for commercial, office, and storage space area, and a new 82,739 square-foot multi-level parking structure. The ocean is currently not visible from the project site. The project site is visible from the northbound lanes of Interstate 5, the Del Mar Shopping Center, and San Dieguito Lagoon to the south. The site is minimally visible from Interstate 5 southbound lanes due to the raised portion of the freeway and the proximity of the development to the vegetated slope. The visual stature and bulk of the proposed buildings will be partly offset by their proximity and placement below the slope on the north and west sides of the project. The project will not be substantially more visible from public spaces than the existing development. The market building will be closer to Via del la Valle and farther from the slope than the current cinema building, making it more prominent from roadways. However, the structures proposed on site would not obstruct any public viewing areas since the site sits lower than topographical features immediately to the north. The project is near the San Dieguito Lagoon; however, the Del Mar Shopping Center is situated between the Lagoon and the proposed project and currently obstructs views nearest to the site. For these reasons, the proposed project would not result in any impacts to public views to and along the ocean.

**2. The proposed coastal development will not adversely affect environmentally sensitive lands.** The project site is currently developed and there are no environmentally sensitive habitats on the site, nor is the site adjacent to the City of San Diego's Multi Habitat Planning Area. The existing slopes on the site are manufactured and do not meet the definition of environmentally sensitive lands. The nearest environmentally sensitive lands are associated with the San Dieguito Lagoon which lies approximately 1,000 feet south of the project. The project site is separated from the lagoon by Via de la Valle and the Del Mar Shopping Center. The separation of the project from the lagoon will avoid direct impacts and reduce indirect impacts on this environmentally sensitive resource. In addition to the spatial separation, impacts to environmentally sensitive lands will be minimized by implementation of water quality control measures mandated by City's Municipal Storm Water Permit and water quality regulations. Additionally, the project proposes to implement several green building standards including a water filtration system for storm drains. Therefore, the proposed development will not adversely affect environmentally sensitive lands.

**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 certified Local Coastal Program land use plan is consistent with the City of San Diego General Plan (General Plan) and North City Local Coastal Program (LCP) Land Use Plan land use designations. The project proposes uses consistent with the General Plan land use designation (commercial employment, retail, and services) and implementing zone (CC-1-3). It is covered by the City's Local Coastal Program, which is included in the Coastal Resources section of the Conservation Element of the General Plan. The Conservation Element of the General Plan includes several policies to implement the Local Coastal Program. The proposed project complies with the relevant policies of the program. The Conservation Element includes policies to reduce runoff and improve the quality of runoff discharged into coastal waters, encourage conservation measures and water recycling programs that eliminate or discourage wasteful uses of water, develop and expand water-efficient landscaping, and improve urban runoff water quality through implementation of storm water protection measures. The Flower Hill project proposes several sustainable techniques which will implement these policies such as using landscaping with low water requirements, using water-efficient irrigation control systems and devices, such as soil-moisture based irrigation controls, retaining storm water runoff within landscaped areas where possible, and installing a water filtration system for storm drains. Therefore, the project is in conformance with the regulations of the certified Local Coastal Program and Implementation Program.

**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 proposed coastal development does not lie between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone. The development will have no affect upon public access and the recreation policies

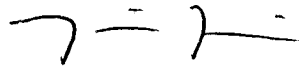
of Chapter 3 of the California Coastal Act and therefore be in conformance with such Act.

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

BE IT FURTHER RESOLVED, that Coastal Development Permit No. 619980 is granted to Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owners/Permittees, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JAN GOLDSMITH, City Attorney

By



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Nina Fain  
Deputy City Attorney

NF:js  
03/07/11  
04/25/11 Revised  
Or.Dept: DSD  
R-2011-760  
PL#2010-00941

**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

INTERNAL ORDER NUMBER: 23432020

**COASTAL DEVELOPMENT PERMIT NO. 619980**  
**FLOWER HILL PROMENADE PROJECT NO. 172026; MMRP**  
**CITY COUNCIL**

This Coastal Development Permit No. 619980 is granted by the City Council of the City of San Diego to Protea Flower Hill Mall, L.L.C. and Protea Flower Hill West, L.L.C., both California Limited Liability Companies, Owners and Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0701. The 15.14-acre site is located at 2720 Via de la Valle in the CC-1-3 and Coastal Overlay (non-appealable) Zones of the City of San Diego General Plan and North City Local Coastal Program Land Use Plan areas. The project site is legally described as Parcel 1 and 2 of Parcel Map No. 20470 in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, April 17, 2008.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owners and Permittees to demolish the existing 14,000 square-foot theater, and to construct approximately 74,995 square feet of new building area for commercial, office, and storage space, and a new 82,739 square-foot, gross floor area parking structure at an existing commercial development, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated April 19, 2011, on file in the Development Services Department.

The project shall include:

- a. Demolition of the existing 14,000 square-foot theatre building;
- b. Construction of a two-story, approximately 72,695 square-foot commercial and office building structure;
- c. Construction of an approximate 144,792 square-foot parking structure with 397 spaces and consisting of approximately 82,739 square-foot, three-story portion above ground and approximately 62,053 square-foot below ground, which includes a 2,300 square-foot storage area in the structure;

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- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking;
- d. A stepped retaining wall structure of approximately 220 linear feet and 47 feet in height at the highest point; and
- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all 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 Owners/Permittees 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 all of the requirements and conditions of this Permit and related documents shall be binding upon the Owners/Permittees and any successor(s) in interest.
5. The 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 Owners/Permittees for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies

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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 Owners/Permittees shall secure all necessary building permits. The Owners/Permittees is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited 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 were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owners/Permittees 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, Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees shall not be required to pay or perform any settlement unless such settlement is approved by Owners/Permittees.

**ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

11. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

12. The mitigation measures specified in the MMRP and outlined in Environmental Impact Report No. 172026, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

13. The Owners/Permittees shall comply with the MMRP as specified in Environmental Impact Report No. 172026, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

Transportation and Circulation;  
Biological Resources;  
Paleontological Resources; and  
Public Utilities (Solid Waste)

**ENGINEERING REQUIREMENTS:**

14. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall execute and obtain City approval of an Encroachment Maintenance and Removal Agreement for the private storm drains, landscape, irrigation and their appurtenances located within the City's right-of-way.

15. Prior to the issuance of any construction permit for buildings, the Owners/Permittees shall enter into a Maintenance Agreement for the ongoing permanent Storm Water Best Management Practices [BMP] maintenance, to the satisfaction of the City Engineer.

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

17. Prior to the issuance of any construction permit, the Owners/Permittees shall incorporate and show the type and location of all post construction BMP's on the final construction drawings, consistent with the approved Water Quality Technical Report.

18. The drainage system for this project shall be private and will be subject to approval by the City Engineer.

19. Prior to the issuance of any construction permits, the Owners/Permittees 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 to the satisfaction of the City Engineer.

20. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99 08 and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CA S0108758), 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.

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 Permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 99 08 DWQ.

21. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the replacement of the existing driveway on San Andres Drive to provide adequate sidewalk transitions, per Standard Drawing G-14B, G-16 and SDG-100, to the satisfaction of the City Engineer.

22. Prior to the issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the installation of City standard curb ramps with truncated domes, on both sides of the project entrances on Via De La Valle and San Andres Drive, to the satisfaction of the City Engineer.

### **GEOLOGY REQUIREMENTS:**

23. Prior to issuance of any construction permits, the Owners/Permittees shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter will be reviewed for adequacy to the satisfaction of the Geology Section of the Development Services Department and the City Engineer.

24. The Owners/Permittees shall submit an as-graded geotechnical report prepared in accordance with the City's "Guidelines for Geotechnical Reports" following completion of the grading. The as-graded geotechnical report will be reviewed for adequacy to the satisfaction of the Geology Section of the Development Services Department and the City Engineer prior to exoneration of the bond and grading permit close-out.

**LANDSCAPE REQUIREMENTS:**

25. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit "A," Landscape Development Plan.

26. Prior to issuance of any construction permits for buildings (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department.

27. New landscape planting materials, including trees, shrubs and specimen plants shall exceed the City's minimum standards and provide the height, width and coverage needed that will provide significant screening of buildings and structures at the time of installation.

28. Construction plans within the public right of way shall take into account a 40 square-foot area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)(5).

29. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owners/Permittees to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

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

31. Any required planting that dies within three years of installation shall be replaced within 30 calendar days of plant death with the same size and species of plant material shown on the approved plan. Required shrubs or trees that die three years or more after installation shall be replaced with 15-gallon size or 60-inch box size material, respectively. Development Services may authorize adjustment of the size and quantity of replacement material where material replacement would occur in inaccessible areas or where the existing plant being replaced is larger than a 15-gallon shrub or 60-inch box tree.

**PLANNING/DESIGN REQUIREMENTS:**

32. Upon completion of the development, the Owners/Permittees shall maintain a minimum of 866 off-street parking spaces (including 9 carpool spaces, 15 standard accessible spaces and 3 van accessible spaces), 10 motorcycle spaces, and 8 bicycle spaces with rack(s) shall be provided on the property at all times in the approximate locations shown on the approved Exhibit "A" and

as required by the Land Development Code. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Director.

33. 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 Owners/Permittees.

34. Prior to the issuance of construction permits for buildings, pedestrian paths shall be shown on the construction documents consistent with Exhibit "A." The paths shall be continuous, clear of obstructions, easily identifiable as pedestrian paths, and visually distinguishable from other hardscaping. Pedestrian paths shall be separated from vehicular access areas by wheelstops, curbs, landscaping, or other physical barriers, except when crossing driveways or aisles.

35. Prior to the issuance of construction permits for buildings, construction documents shall fully illustrate the incorporation of the following sustainable design features on the new structures and on the site and landscape plans:

- The installation of energy-efficient lighting and lighting control systems;
- The installation of energy-efficient heating and cooling systems, appliances and equipment, and control systems;
- Limiting the hours of operation of outdoor lighting;
- The use of thermal-efficient glazing/fenestration systems;
- The use of "cool" roof material;
- The creation of water-efficient landscapes; and
- The installation of water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls.

36. All signs associated with this development shall be consistent with sign criteria established by either the approved development's Comprehensive Sign Plan No. 1, dated February 6, 1976 or the City-wide sign regulations.

37. 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 SDMC.

**TRANSPORTATION REQUIREMENTS:**

38. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the construction of a minimum 5-foot wide non-contiguous sidewalk along the project's frontage along Via de la Valle as shown on the project's Exhibit "A," to the satisfaction of the City Engineer.

39. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the construction of a minimum 5-foot wide non-contiguous sidewalk along the project's frontage along San Andres Drive as shown on the project's Exhibit "A," to the satisfaction of the City Engineer.

40. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the installation of a "Keep Clear" marking on the pavement on-site, where the project driveway on Via de la Valle meets the east/west circulation aisle, approximately 100 feet north of Via de la Valle. Additionally, stop signs shall not be placed facing northbound traffic at the location where the main project driveway meets the east/west circulation aisle.

41. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall dedicate 5 feet along the project frontage on San Andres Drive to provide a minimum 10-foot curb to property line distance, to the satisfaction of the City Engineer.

42. Prior to issuance of the construction permit for buildings, the Owners/Permittees shall provide evidence of a recorded Shared Parking Agreement that allows Assessor Parcel No. 298-490-44 the right to use 528 automobile parking spaces on Assessor Parcel No. 298-490-43, to the satisfaction of the City Engineer.

43. Prior to issuance of a Certificate of Occupancy, Owner/Permittee shall provide a Letter of Credit, cash payment, or bond equal to 7.7 percent of the Black Mountain Ranch Facilities Financing Plan Fiscal Year 2006 cost estimate to complete the planned improvements identified in the Black Mountain ranch Public Facilities Financing Plan as Project No. T-32.1 for the widening of Via de la Valle between San Andres Drive to El Camino Real (West), from a two lane to a four lane roadway. Prior to the issuance of the first building permit for a structure, Owner/Permittee shall pay the estimated cost, approved by the City Engineer, to form a cost reimbursement district to collect any funds necessary to complete Black Mountain Ranch Facilities Financing Plan Project T-32.1.

Prior to issuance of any construction permit, the Owner/Permittee shall pay 25% of the estimated cost, approved by the City Engineer, to establish a funding bank for processing any possible future Cost Reimbursement District application by others, to assist in collection of any funds necessary to complete Black Mountain Ranch Public Facilities Financing Plan Project T-32.1. The balance shall be paid prior to issuance of any construction permit for a building.

44. Prior to issuance of any construction permit for a building, excluding a permit for the retaining wall, the Owners/Permittees shall assure by permit and bond the widening of the project driveway on Via de la Valle to provide one southbound left, one southbound through/right, and one southbound right lane, to the satisfaction of the City Engineer.

## **WASTEWATER REQUIREMENTS:**

45. All onsite sewer facilities that serve only this lot shall be private.
46. Prior to the issuance of any Certificate of Occupancy, the Owners/Permittees shall install all sewer facilities required by the accepted sewer study necessary to serve this development. Sewer facilities as shown on the approved plans may require modification based on the accepted sewer study, to the satisfaction of the Director of Public Utilities and the City Engineer.
47. Prior to the issuance of any construction permits for public improvements, the Owners/Permittees shall grant adequate sewer, and/or access easements for all public sewer facilities that are not located within public rights of way, to the satisfaction of the Director of Public Utilities. Easements shall be surfaced with suitable approved material, to the satisfaction of the Director of Public Utilities and the City Engineer.
48. Prior to the issuance of any construction permits for public improvements, the Owners/Permittees shall execute and obtain City approval of an Encroachment, Maintenance, and Removal Agreement for all proposed improvements, including grading, utilities, landscaping, and enhanced paving located in or over any public sewer access easement, to the satisfaction of the Director of Public Utilities and the City Engineer.
49. Structures or landscaping shall not be installed in or over any sewer easement that would inhibit access to replace a section of main or provide access to any manhole or isolated section of main.
50. Trees shall not be installed within ten feet of any sewer facilities or in any sewer access easement. Shrubs exceeding three feet in height at maturity shall not be installed within ten feet of any public sewer main or within access easements.
51. Other utilities, including gas, electric, telephone and fiber optic cable, shall not be located within ten feet of any public sewer main when these utilities are installed parallel to the sewer main. General Utility Easements (GUE) in private roads and driveways shall be sized with sufficient width to provide for other agencies facilities. In side yards or other non-street areas, a GUE must be dedicated for the exclusive use of the City of San Diego Public Utilities Department, to the satisfaction of the Director of Public Utilities and the City Engineer. Any other agencies will require separate easements.
52. The Owners/Permittees shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide, to the satisfaction of the Director of Public Utilities and the City Engineer.
53. The 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 construction permit building plan check, to the satisfaction of the Director of Public Utilities and the City Engineer.

54. Prior to the issuance of any construction permits, excluding permits for demolition and/or retaining wall activities, the Owners/Permittees shall provide written verification to the City of San Diego from the City of Solana Beach indicating this site is authorized to discharge sewer flows into the City of Solana Beach wastewater system, to the satisfaction of the Director of Public Utilities and the City Engineer.

55. The Owners/Permittees shall design, obtain permits, and construct all proposed (private and public) sewer facilities to the most current laws, ordinances, and regulations of the City of Solana Beach, to the satisfaction of the City Engineer of the City of Solana Beach. The type of sewage discharged into the sewer system shall meet the requirements and restrictions of the San Elijo Joint Powers Authority.

56. Prior to the issuance of any construction permit, excluding permits for demolition and/or retaining wall activities, the Owners/Permittees shall provide a copy of a final report, prepared for the City of Solana Beach, conducting an existing conditions flow measurement on the existing 12-inch diameter vitrified clay pipe (VCP) in Via de la Valle, west of the project site. The flow measurements shall occur during both the AM and PM peak hours for three days, including a weekend, to the satisfaction of the Director of Public Utilities and the City Engineer.

57. Prior to the issuance of any construction permit, excluding permits for demolition and/or retaining wall activities, the Owners/Permittees shall provide evidence that an agreement has been fully executed between the City of Solana Beach and the Owners/Permittees. The agreement shall require the Owners/Permittees to perform a flow measurement survey of the existing 12-inch diameter vitrified clay pipe (VCP) in Via De La Valle within one month after full occupancy of the new shopping center. The flow measurements shall occur during both the AM and PM peak hours for three days, including a weekend. If it is determined, by the City Engineer of the City of Solana Beach, that the existing system is inadequate to convey the additional flow due to this project expansion, the agreement shall require the Owners/Permittees to improve the existing wastewater distribution system to the satisfaction of the City Engineer of the City of Solana Beach.

**WATER REQUIREMENTS:**

58. Prior to the issuance of any construction permits for public improvements, the Owners/Permittees shall assure by permit and bond the design and construction of two 12-inch diameter water mains within a 24-foot wide minimum water easement. The water mains must be connected with 20-inch x 20-inch x 20-inch tee and three valves to the existing 20-inch diameter water main in Via De La Valle right-of-way adjacent to the project site, to the satisfaction of the Director of Public Utilities and the City Engineer.

59. The Owners/Permittees shall execute and obtain City approval of an Encroachment, Maintenance, and Removal Agreement(s), for all acceptable encroachments into the water easement, including but not limited to structures, enhanced paving, or landscaping. No structures or landscaping of any kind shall be installed in or over any vehicular access roadway.

60. Prior to the issuance of any construction permits for public improvements, the Owners/Permittees shall assure by permit and bond the design and construction of any new water service(s) outside of any driveway, and the disconnection at the water main of the existing unused water service adjacent to the project site, to the satisfaction of the Director of Public Utilities and the City Engineer.

61. Prior to the issuance of any construction permits for buildings, the Owners/Permittees shall apply for a plumbing permit for the installation of appropriate private back flow prevention device, on irrigation water service, to the satisfaction of the Director of Public Utilities and the City Engineer.

62. Prior to the issuance of any Certificates of Occupancy for buildings, all public water facilities shall be complete and operational to the satisfaction of the Director of Public Utilities and the City Engineer.

63. The Owners/Permittees shall design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities, and associated easements, as shown on approved Exhibit "A" shall be modified at final engineering to comply with standards.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.
- The top level of the parking structure shall include landscaped trellis structures and additional landscape features as exhibited and agreed upon by the Owner/Permittee during the City's public hearing.

APPROVED by the City Council of the City of San Diego on April 19, 2011 and Approved Resolution Number R- 300773.

REV. 04/25/11

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

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Tim Daly  
Development Project Manager

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

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**The undersigned Owners/Permittees, by execution hereof, agrees to each and every condition  
of this Permit and promises to perform each and every obligation of Owners/Permittees  
hereunder.**

Protea Flower Hill Mall, L.L.C.,  
A California Limited Liability Company  
Owners/Permittees

By \_\_\_\_\_  
NAME  
TITLE

Protea Flower Hill Mall West, L.L.C.,  
A California Limited Liability Company  
Owners/Permittees

By \_\_\_\_\_  
NAME  
TITLE

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**