

**RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
DEPARTMENT**

**AND WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DRAFT
PLANNED COMMERCIAL DEVELOPMENT
PERMIT NO. 99-1341
SCRIPPS GATEWAY FREEWAY CENTER
City Council

This Permit is granted by the City Council of the City of San Diego to SHEA HOMES LIMITED PARTNERSHIP, LLC, Owner and SHEA PROPERTIES, Permittee pursuant to Sections 101.0910, 101.0510 and 101.0515 of the Municipal Code of the City of San Diego. The 20.3 acre site is located on the northern side of Scripps Poway Parkway, east of Interstate 15 in the CA zone of the Miramar Ranch North Community Plan area. The project site is legally described as Lots 1, 2, 3, 5, 6, and 12, Map No. 14063, filed November 1, 2000 in the City of San Diego, County of San Diego, State of California.

Subject to the terms and conditions set forth in this permit, permission is granted to Owner/Permittee to develop two hotels; one four story 137 room hotel approximately 73,925 square feet and one four story 97 room hotel approximately 69,000 square feet, one restaurant approximately 5,530 square feet, one drive-through restaurant approximately 3,200 square feet, two retail spaces approximately 5,000 and 4,000 square feet, surface parking, a park and ride lot and landscaping and improvements in the public right-of-way described as, and identified by size, dimension, quantity, type and location on the approved Exhibits "A", dated August 7, 2001 on file in the Office of Development Services Department. The facility shall include:

- a. Six buildings at an approximate maximum 162,373 square feet; two hotels; one four story 137 room hotel at approximately 73,925 square feet and one four story 97 room hotel at approximately 69,000 square feet, one sit down restaurant at approximately 5,530 square feet, one drive-through restaurant at approximately 3,200 square feet, two retail buildings at approximately 5,000 and 4,000 square feet;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. 345 off-street parking spaces (including ten for CUP 99-1341, overall site total);
- d. 120 parking spaces for a park and ride facility;
- e. Sign Program which includes tenant walls signs, ground mounted signs, regulatory signs, directional signs; and

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- f. 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 Municipal Code in effect for this site.
 1. Construction, grading or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision-maker.
 2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the office of the San Diego County Recorder.
 3. Unless this permit has been revoked by the City of San Diego the property included by reference within this permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.
 4. This permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this permit and all referenced documents.
 5. The utilization and continued use of this permit shall be subject to the regulations of this and any other applicable governmental agencies.
 6. Issuance of this permit by the City of San Diego does not authorize the Owner/Permittee for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.)
 7. Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit/tentative map, may protest the imposition within 90 days of the approval of this development permit/tentative map by filing a written protest with the City Clerk pursuant to California Government Code 66020.
 8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

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9. No change, modification or alteration shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.
10. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated August 7, 2001, on file in the Office of Development Services Department. No change, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.
11. Architectural design of buildings 6 and 8 shall be consistent with the design of buildings 4, 5, and 7 regarding materials, detailing and articulation.
12. Before issuance of any building permits, the Owner/Permittee shall submit plans indicating bicycle racks with a capacity of ten parking stalls shall be installed for use at the Park-and-Ride facility.
13. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the 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 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.

MSCP REQUIREMENTS:

14. The development shall conform with the applicable Land Use Adjacency Guidelines (Section 1.4.3) of the MSCP Subarea Plan. In particular, lighting, drainage, landscaping, grading, access and noise must not adversely affect the MHPA: 1). Lighting should be directed away from the MHPA, and shielded if necessary. Any proposed lighting at the rear of the buildings or for the areas of the parking lot on the northern boundary of the project shall be minimized, shielded and directed downward to avoid spill into the preserve. 2). Drainage shall be directed away from the MHPA or not drain directly into the MHPA. The design of the project shall utilize sedimentation basins, grassy swales or mechanical trapping devices to control and reduce pollution into the MHPA. The proposed drainage control system shall be adequate to filter and slow storm flow velocities generated by the project before discharge into the MHPA. 3). No invasive, non-native plant species shall be planted in or adjacent to the MHPA. 4). Due to the

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site's proximity to coastal sage scrub within the Multi-Habitat Planning Area (MHPA), noise impacts related to construction shall be avoided, if possible, during the breeding season of the California gnatcatcher (3/1-8/15). If construction is proposed during the breeding season a survey to determine the presence of California gnatcatchers shall be required. If no gnatcatchers are identified within the MHPA no additional measures will be required. If present, measures to minimize noise impacts will be required and should include temporary noise walls/berms. If a survey is not conducted and construction is proposed during the breeding season, presence would be assumed and a temporary wall/berm shall be required. Noise levels from construction activities during the CA gnatcatcher breeding season should not exceed 60 dBA hourly LEQ at the edge of the MHPA or the ambient noise level if noise levels already exceed 60 dBA hourly LEQ.

ENGINEERING REQUIREMENTS:

15. Prior to issuance of any building permits, the Owner/Permittee shall provide a shared parking agreement.

16. Prior to issuance of any building permits, the Owner/Permittee shall assure by permit and bond the construction of a traffic signal at the intersection of Scripps Poway Parkway and Scripps Highland Drive, satisfactory to the City Engineer.

WATER REQUIREMENTS:

17. Prior to the issuance of any building or grading permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of a system of twelve inch water mains connecting to 712 HGL water facilities in Scripps Highlands Drive and Scripps Poway Parkway in a manner satisfactory to the Water Department Director and the City Engineer.

18. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the installation of fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two (2) fire hydrants are located on a dead-end main then the Owner/Permittee shall design and construct appropriate facilities to provide a redundant water supply.

19. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of the Scripps Poway Parkway Water Pump Station, in a manner satisfactory to the Water Department Director and the City Engineer.

20. Prior to the issuance of any building permits, the Owner/Permittee shall grant appropriate water and/or access easements, including vehicular access to each appurtenance (meters, blow offs, air valves, manholes, etc.), for all public water facilities that are not located within fully improved public rights-of-way, satisfactory to the Water Department Director and the City Engineer. Minimum easement widths for water mains with services or fire hydrants is 24-feet and fully paved. No structures or landscaping of any kind shall be installed in or over any easement utilized for vehicular access.

21. The Owner/Permittee shall provide evidence, satisfactory to the Water Department Director, indicating that each lot will have its own water service or provide CC&Rs for the operation and maintenance of on-site private water facilities that serve more than one lot.

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22. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current editions of the City of San Diego Water and Sewer Design Guides.

23. All common areas and/or open spaces that require irrigation shall be irrigated with reclaimed water as specified in City Council Ordinance O-17327. The Owner/Permittee shall design and install a reclaimed water irrigation system within the development in accordance with "Rules and Regulations for Reclaimed Water Use and Distribution within the City of San Diego" satisfactory to the Water Department Director.

SEWER REQUIREMENTS:

24. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of public sewer facilities, necessary to serve the proposed development.

25. The Owner/Permittee shall design all proposed sewer facilities in accordance with established criteria in the most current edition of the City of San Diego's sewer design guide." Proposed facilities that do not meet the current standards shall be private or redesigned.

26. The Owner/Permittee shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each unit will have its own sewer lateral or provide CC&Rs for the operation and maintenance of on-site private sewer facilities that serve more than one ownership.

27. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check. In addition, the Owner/Permittee shall submit calculations, satisfactory to the Metropolitan Wastewater Department Director, for sizing of the proposed sewer lateral from the property line to its connection with the public sewer main.

PLANNING/DESIGN REQUIREMENTS:

28. No fewer than 465 (including the 120 park and ride spaces) off-street parking spaces or the number required by a shared parking analysis acceptable to the Land Development Review Department, whichever is less, shall be maintained on the property at all times in the approximate locations shown on the approved Exhibits "A," dated August 7, 2001, on file in the Office of Development Services Department. Parking spaces shall comply at all times with Land Development Code and shall not be converted for any other use unless otherwise authorized by the City Manager.

29. 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 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.

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30. 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.
31. A topographical survey or pad certification conforming to the provisions of the Municipal Code 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. The cost of any such survey or certification shall be borne by the Owner/Permittee.
32. No building additions shall be permitted unless approved by the City Manager.
33. All signage associated with this development shall be consistent with sign criteria established by the approved Sign Program, Exhibit "A", dated August 7, 2001.
34. Prior to the issuance of any building 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 fifty (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.

Prior to the issuance of any occupancy permit, a night inspection shall be required to verify compliance of the outdoor lighting system. No light shall be directed to fall outside the property line. Light levels along the perimeter of the property shall be measured no higher than three footcandles. Light levels throughout the development shall be the least practical level necessary to effectively illuminate the operation. Sky glow or light halo shall be reduced to the greatest extent practical and in no case shall initial light levels be measured exceeding eight footcandles anywhere within the site. The Owner/Permittee, or an authorized representative, shall provide an illuminance meter to measure light levels as required to establish conformance with the conditions of this permit during the night inspection. Night inspections may be required additional fees as determined by the Development Services Manager.
35. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
36. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
37. No mechanical equipment, tank, duct, elevator enclosure, cooling tower or 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.
38. No merchandise, material or equipment shall be stored on the roof of any building.

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

LANDSCAPE REQUIREMENTS:

40. In the event that a foundation only permit is requested by the Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A", Landscape Concept Plan, dated August 7, 2001, on file in the Office of Development Services. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as landscaping area.

41. Prior to issuance of any construction permits for structures, complete landscape and irrigation construction documents consistent with the Landscape Technical Manual, including planting and irrigation plans, details and specifications, shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A", Landscape Concept Plan, dated August 7, 2001, on file in the Office of Development Services.

42. Prior to issuance of any engineering permits for grading, construction documents for slope planting or revegetation and hydroseeding of all disturbed land including irrigation shall be submitted in accordance with the Landscape Technical Manual Section 7 and to the satisfaction of the City Manager. All plans shall be in substantial conformance to Exhibit "A", dated August 7, 2001, on file in the Office of Development Services.

43. The Permittee or subsequent Owner shall be responsible for the maintenance of all street trees and landscape improvements (right-of-way and median landscaping) consistent with the standards of the Landscape Technical Manual unless long-term maintenance of street trees, right-of-way and median landscaping will be the responsibility of a Landscape Maintenance District or other approved entity.

44. 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 City Manager within 30 days of damage or Certificate of Occupancy.

45. Prior to issuance of grading permits, interim landscape and erosion control measures, including hydroseeding of all disturbed land shall be submitted to the satisfaction of the City Manager and City Engineer. All plans shall be in substantial conformance to Exhibit "A," dated August 7, 2001, on file in the Office of Development Services Department and all other applicable conditions of related permits.

46. The timely erosion control including planting and seeding of all slopes and pads consistent with the approved plans is considered to be in the public interest and the Permittee shall initiate such measures within 45 days from the date that the grading of the site is deemed to

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be complete. Such erosion control and the associated irrigation systems (temporary and/or permanent) and appurtenances shall be installed in accordance with the approved plans and the *Landscape Technical Manual*.

47. Prior to issuance of any Certificate of Occupancy it shall be the responsibility of the Permittee to install all required landscape and obtain all required landscape inspections and to obtain a No Fee Street Tree Permit for the installation, establishment and on-going maintenance of all street trees. Copies of these approved documents must be submitted to the City Manager.

48. All required landscape shall be maintained in a disease, weed and litter free condition at all times and shall not be modified or altered unless this Permit has been amended. Modifications such as severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit. The Permittee, or subsequent Owner shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the *Landscape Technical Manual*.

APPROVED by the Council of the City of San Diego on August 7, 2001.

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ALL-PURPOSE CERTIFICATE

Type/Number of Document PCD 99-1341
Date of Approval August 7, 2001.

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

John S. Fisher, Development Project Manager

On _____ before me, _____ (Notary Public), personally appeared John S. Fisher, Development Project Manager of Development Services Department of the City of San Diego, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____

(Seal)

ALL-PURPOSE CERTIFICATE

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

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

Signed _____ Signed _____
Typed Name Typed Name

STATE OF _____
COUNTY OF _____

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

WITNESS my hand and official seal.

Signature _____

(Seal)