

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT

WHEN RECORDED MAIL TO
PERMIT INTAKE
MAIL STATION 501

JOB ORDER NUMBER: 41-0930

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SITE DEVELOPMENT PERMIT NO. 10143
BANKER'S HILL TOWNHOMES
CITY COUNCIL (DRAFT)

This Site Development Permit is granted by the City Council of the City of San Diego to AVALON PROPERTY DEVELOPMENT, INC., Owner, and Permittee, pursuant to San Diego Municipal Code [SDMC] Section 126.0504. The 0.46-acre site is located at 2561 First Avenue in the NP-3 Zone (proposed NP-1) of the Mid-City Communities Planned District within the Uptown Community Planning Area. The project site is legally described as Lots A, B, C, and D, Block No. 287 of Horton's Addition, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by L. L. Lockling on file in the Office of the County Recorder of San Diego County.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to demolish existing buildings and construct a 16-unit residential building (5-stories above underground parking), described and identified by size, dimension, quantity, type, and location on the approved Exhibit "A", dated November 9, 2005, on file in the Offices of the Development Services Department. The exhibits are identified as follows:

- A0.3: Site Plan
- A0.4: Demolition Plan
- C1.1: Grading Plan
- A1.1: Floor Plans and Basement Plan
- A1.2: Floor Plans and Roof Plan
- A2.1: Exterior Elevations and Building Sections
- A2.2: 50' Increment Building Elevations
- A3.1: Enlarged Floor Plans Units A, B, B1 and C
- A3.2: Enlarged Floor Plans Units D, E and F
- L1.1: Landscape Plan

The project or facility shall include:

- a. A 40,250 square-foot, five story, 16-unit condominium project over a 14,695 square-foot, 42 space subterranean parking structure;

- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking facilities;
- d. Deviations permitted by Site Development Permit No. 10143 include
 - 1) a 7'-0" street yard setback for not more than 19'-0" linear feet of building plane where 10'-0" is required; and
 - 2) a 12'-0" rear yard setback for not more than 19'-0" linear feet of building plane where 15'-0" is required; and
 - 3) a 0'-0" side yard setback for a gate element not to exceed 64 square-feet.
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.
8. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
9. 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 November 9, 2005, on file in the offices of the Development Services Department. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.
10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without

the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. Prior to issuance of any grading permits for this project, a final subdivision map shall be recorded on the subject property.
12. This Permit shall become effective with recordation of the corresponding final subdivision map for and approval of the project site.
13. At all bus stops within the project area, if any, the applicant shall be responsible for installing sidewalk improvements where needed to comply with Americans with Disability Act (ADA) requirements and in accordance with standards contained in the City of San Diego Street Design Manual.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

14. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.
15. As conditions of Site Development Permit No. 10143 and Tentative Map No. 10144, the mitigation measures specified in the MMRP, and outlined in the MITIGATED NEGATIVE DECLARATION, LDR NO. 5606 shall be noted on the construction plans and specifications under the heading MITIGATION REQUIREMENTS.
16. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the MITIGATED NEGATIVE DECLARATION, LDR NO. 5606 satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:
 - a. Historical (archeological) Resources
 - b. Paleontological Resources
17. The Mitigation, Monitoring, and Reporting Program (MMRP) shall require a deposit of \$1,000.00 to be collected prior to the issuance of grading permits to cover the City's costs associated with implementation of the MMRP.
18. A Job Order number open to the Land Development Review Division of the Development Services Department shall be required to cover the Land Development Review Division's cost associated with the implementation of the MMRP.

AFFORDABLE HOUSING REQUIREMENTS:

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

LANDSCAPE REQUIREMENTS:

20. Prior to issuance of any grading or building permits, complete landscape construction documents, including plans, details and specifications (including a permanent automatic irrigation system unless otherwise approved), shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit A- dated November 9, 2005, on file in the offices of the Development Services Department. No change, modification, or alteration shall be made unless appropriate application or amendment of this Permit shall have been granted

21. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Owner/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.

22. 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 Owner/Permittee shall be responsible to maintain all street trees and landscape improvements consistent with the standards of the Land Development Manual.

23. If any required landscape (including, but not limited to, existing or new plantings, hardscape, landscape features) indicated on the approved plans is damaged or removed during demolition, it shall be repaired or replaced in kind and equivalent size per the approved plans within thirty days of completion of construction by the Permittee. The replacement size of plant material after three years shall be the equivalent size of that plant at the time of removal (the largest size commercially available or an increased number) to the satisfaction of the City Manager.

24. 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 Development Plan, dated November 9, 2005, 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.

25. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards (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 Development Plan, on file in the Office of Development Services.

26. Prior to issuance of any engineering permits for 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 take into account 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.
27. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A No Fee Street Tree Permit, if applicable, shall be obtained for the installation, establishment and on-going maintenance of all street trees.
28. In the event that the Landscape Plan and the Site Plan conflict, the Landscape Plan shall prevail.
29. Prior to the recordation of the (parcel/final map), the subdivider shall submit complete landscape construction documents, including plans, details, and specifications (including a permanent automatic irrigation system unless otherwise approved), for the required right-of-way improvements in accordance with the Landscape Standards, Exhibit A dated November 9, 2005, and to the satisfaction of the City Manager.
30. Prior to the recordation of the (parcel/final map), the Permittee or subsequent Owner/Developer shall submit for review, a Landscape Maintenance Agreement for all landscape improvements within the public right-of-way area consistent with Exhibit A dated November 9, 2005, The approved Landscape Maintenance Agreement shall be recorded and bonded prior to recordation of the (parcel/final map).

PLANNING/DESIGN REQUIREMENTS:

31. No fewer than 42 off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit A- dated November 9, 2005, on file in the offices of the Development Services Department. Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.
32. 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.
33. 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.

34. 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.
35. 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.
36. No building additions shall be permitted unless approved by the homeowners association and the City Manager. Patio covers may be permitted only if they are consistent with the architecture of the dwelling unit.
37. Prior to the recording of this Permit, the applicant shall grant to the Airport Authority an avigation easement for the purpose of maintaining all aircraft approach paths to Lindbergh Field. This easement shall permit the unconditioned right of flight of aircraft in the federally controlled airspace above the subject property. This easement shall identify the easement's elevation above the property and shall include prohibitions regarding use of and activity on the property that would interfere with the intended use of the easement. This easement may require the grantor of the easement to waive any right of action arising out of noise associated with the flight of aircraft within the easement. A copy of the avigation easement shall be attached to this Permit when the Permit has been signed and notarized and is returned to the Office of the Development Services Department for recording with the County Recorder.
38. Prior to submitting building plans to the City for review, the applicant shall place a note on all building plans indicating that an avigation easement has been granted across the property. The note shall include the County Recorder's recording number for the avigation easement.
39. All signs associated with this development shall be consistent with sign criteria established by either of the following citywide sign regulations.
40. 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.
41. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.
42. The subject property and associated common areas on site shall be maintained in a neat and orderly fashion at all times.
43. 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 structure whose top and sides may include grillwork, louvers, and latticework.

44. 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- dated April 8, 2004, on file in the offices of the Development Services Department on file in the offices of the Development Services Department.

WASTEWATER REQUIREMENTS:

45. The developer shall design and construct all proposed public sewer facilities to 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 re-designed.

46. All proposed private sewer facilities located within a single lot will be designed to meet the requirements of the California Uniform Plumbing Code.

47. The developer shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each dwelling 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 unit.

WATER REQUIREMENTS:

48. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) outside of any driveway in a manner satisfactory to the Water Department Director and the City Engineer.

49. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer. x

50. The Owner/Permittee agrees to 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 shall be modified at final engineering to comply with standards.

INFORMATION ONLY:

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

APPROVED by the City Council of the City of San Diego on: November 9, 2005.

AUTHENTICATED BY THE CITY MANAGER

By _____

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

[NAME OF COMPANY]
Owner/Permittee

By _____

By _____

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

12/8/03 dcj

ALL-PURPOSE CERTIFICATE

Type/PTS Approval Number of Document _____

Date of Approval _____

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DPM Name, Development Project Manager

On _____ before me, **NAME OF NOTARY**, (Notary Public), personally appeared **DPM Name**, Development Project Manager of the 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 _____

Name of Notary

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 _____
Typed Name

Signed _____
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 _____