



DATE: April 1, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Development Services Department/Planning Division

SUBJECT: **DEVELOPER DEPOSIT AGREEMENT WITH MCMILLIN COMMERCIAL**

SYNOPSIS

Staff recommends that the City Council approve a Developer Deposit Agreement with McMillin Commercial (McMillin) with an initial deposit of \$10,000 for technical review work for the four-acre Oceanside portion of the site located on Haymar Drive, just west of College Boulevard, on issues such as traffic and biological buffers from El Salto Falls, and authorization for the City Manager to execute the agreement.

BACKGROUND

South Coast Materials began mining operations in 1961 in the City of Carlsbad south of SR 78 and expanded eastward into the City of Oceanside in 1977 when Conditional Use Permit (CUP) C-2-77 was approved. By July 1995, all mining operations on the Oceanside portion of the parcel were complete and three primary reclamation sites were identified. The entire site mining operation, including the Carlsbad portion, is subject to California's Surface Mining and Reclamation Act of 1975 (SMARA), which assures that sites are left in a safe and stable condition after mining ceases. As Oceanside had several mining operations at the time and Carlsbad had none, it was mutually decided that Oceanside would use its Reclamation Ordinance to administer the plan for this location in both cities. The City of Oceanside was designated by the State as the lead agency for the Reclamation Plan for the entire site by the State Mining and Geology Board's Resolution No 91-11.

On July 23, 2001, the Planning Commission adopted Resolution No. 2001-P24 approving the building of the Quarry Creek Shopping Center development on Oceanside's portion of the old mining property situated around the intersection of Lake Boulevard and College Boulevard, south of Highway 78. Subsequently, 59 acres were developed with nearly 383,000 square feet of building area and the related landscaping and parking. As a result of the environmental review process, the shopping center site plan was modified to remove any grading or other activity from the adjacent portions of land covered by the reclamation plan that are located in Carlsbad. Any additional work on the quarry site would come as reclamation proceeded in Carlsbad and when necessary work with various resource agencies is completed.

The current proposal by the McMillin Company is to develop up to 600 homes on 154 acres in the City of Carlsbad as part of a master planning process required by that City. Four acres of the master plan area are in the City of Oceanside, adjacent to Mossy Nissan and El Salto Falls. No uses are currently proposed within the Oceanside portion of the proposed master plan.

ANALYSIS

Staff will be working with McMillin to review their plans for the four-acre Oceanside portion of the site on issues such as traffic and biological buffers from El Salto Falls. The establishment of the Developer Deposit Account with McMillin will allow the City to collect fees in advance of the review work to be done, and will ensure that the developer bears the full cost of all staff time. The fees will also be used as a deposit account when formal plans are submitted to the City of Oceanside for processing.

Developer Deposit accounts are frequently used by cities and counties as a cost recovery account for services provided to a developer that are not covered by existing fee schedules. Each account is given an individual monitoring number and all expenses incurred by the project are charged directly to the project. Consultant contracts, City staff time and materials will be charged in this manner and the developer can be given an exact accounting of the time and expenses incurred by the City on its project.

FISCAL IMPACT

The City will be requiring a Developer Deposit Agreement from McMillin, with an initial deposit of \$10,000, against future expenditures related to technical reviews on the Oceanside portion of the development site. The process will be to place the developer deposit into a Deferred Revenue account in the general fund 101.2052.52567 and every month the expenditures will be reconciled and a journal entry will be made to move the funds into the 101.264335 business unit. These funds will ensure that time and materials for City staff, as well as a consultant contract for the environmental work, will be charged against McMillin's own funds. More funds will be requested if necessary, and any surplus will be returned at the end of the project.

CITY ATTORNEY'S ANALYSIS

The referenced document have been reviewed by the City Attorney and approved as to form.

RECOMMENDATIONS

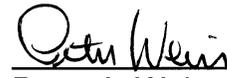
Staff recommends that the City Council approve a Developer Deposit Agreement with McMillin Commercial (McMillin) with an initial deposit of \$10,000 for technical review work for the four-acre Oceanside portion of the site located on Haymar Drive, just west of College Boulevard, on issues such as traffic and biological buffers from El Salto Falls, and authorization for the City Manager to execute the agreement.

PREPARED BY:



Jerry Hittleman
City Planner

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager
George Buell, Development Services Director
Teri Ferro, Financial Services Director



ATTACHMENT:

1. Developer Deposit Agreement Form

PROCESSING AGREEMENT FORM

Agreement for Payment of Costs of Development Application Processing

This agreement is by and between the City of Oceanside, hereinafter "City," and _____ hereinafter "Applicant."

Project Description: _____

PROPERTY INFORMATION:

1. Property Location: _____ Interest of Applicant _____
(if not fee ownership)

2. APPLICANT INFORMATION:

Applicant Name: _____ Applicant Phone: _____
Firm Name: _____ Tax ID or SS #: _____
Address: _____

3. CONTACT INFORMATION:

Contact Name: _____ Contact Phone: _____
Address (if different): _____

4. INITIAL DEPOSIT AMOUNT:

Subsequent Deposit: _____ Date Rec'd: _____
Subsequent Deposit: _____ Date Rec'd: _____
Subsequent Deposit: _____ Date Rec'd: _____

5. BILLING INFORMATION

Statements, requests for deposits or refunds shall be directed to Applicant identified in Section 2 above unless stated otherwise below:

Name: _____ Tax ID or SS #: _____
Address: _____

- A. Applicant agrees to pay all personnel and related direct, indirect and overhead costs for review and processing necessary for the subject project, even if the application is withdrawn, not approved, approved subject to conditions or modified upon approval. Applicant agrees to make deposit(s) and /or reimbursements(s) to be applied toward the above costs in an amount and at such time as requested in writing by the Development Services Director and/or the City Manager. If Applicant does not submit such requested funds within fourteen (14) days after they are requested, staff may stop work on the project until the payment is made.
- B. Interest shall accrue on all costs unpaid 30 days after a deposit or reimbursement request by the City at the maximum legal rate, and the City is entitled to recover its costs, including attorney's fees, in collecting unpaid amounts. Any refund of amounts deposited shall be made in the name of the Applicant, to the address for billing information. Invoices are due and payable within 30 days.
- C. Applicant shall provide written notice to the Finance Department in the event there is a change in Applicant's interest in the property, the project, or the billing address or contact person for said project. Said Notice to be mailed to City of Oceanside, Finance Director, 300 North Coast Highway, Oceanside, CA 92054. A copy should also be sent to the Development Services Director at the same address. Applicant shall remain responsible for all outstanding costs incurred by the City.

- D. Applicant agrees to defend, indemnify, release and hold harmless the City of Oceanside, its agents, officers, attorneys, employees, boards and commissions, from any claim, action or proceedings brought against any of the foregoing individuals or entities, the purpose of which is to attach, set aside, void or annul the approval of this application or adoption of the environmental document which accompanies it. The indemnification shall include, but not be limited to damages, costs, expenses, attorney fees or expert witness fees that may be asserted by any person or entity, including the Applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, its agents, officers, attorneys, employees, boards and commissions.

- E. This agreement shall only be executed by an authorized representative of the Applicant. The person executing this Agreement represents that he/she has the express authority to enter into agreements on behalf of the Applicant.

Signature of Applicant: _____ Date: _____

Print Name and Title: _____

City of Oceanside

By: _____ Date: _____
Peter A. Weiss, City Manager