



County of San Diego

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STIPULATED ADMINISTRATIVE ENFORCEMENT ORDER

DATE OF ORDER:	October 27, 2015
LOCATION OF VIOLATION	19150 High Glen Road Alpine, CA 91901
APNs	521-130-08-00, 521-130-05-00, 521-130-07-00, 522-070-03-00
ZONE	A72
PROPERTY OWNER	Covert Canyon, LLC 5590 Ruffin Road San Diego, CA 92123

The San Diego County Department of Planning & Development Services ("COUNTY") and Covert Canyon, LLC ("Covert Canyon"), appearing by and through their officer and representative Marc Halcon¹ and his attorney, Robert Wright, agree to the issuance of the following Stipulated Administrative Enforcement Order (Stipulation) to resolve alleged violations occurring at 19150 High Glen Road in Alpine, California, Assessor Parcel Number ("APN") 521-130-08-00 and bind it and its contiguous parcels: 521-130-05-00, 521-130-07-00, and 522-070-03-00. All four parcels hereinafter referred to as the "Property" are owned by Covert Canyon.

This Stipulation is entered into without trial or adjudication of any issue of fact or law, and parties identified above agree that the Stipulation governs the enforcement of the San Diego County Zoning Ordinance ("SDCZO") and the San Diego County Code of Regulatory Ordinances ("SDCCRO") at the Property while Covert Canyon actively seeks a discretionary Site Plan permit, building permits, and a grading permit for the Property in accordance with the compliance measures outlined in this Stipulation. The parties further agree that the Stipulation

¹ Mr. Halcon is listed as an officer on Covert Canyon's Corporate Filing with the California Secretary of State

resolves the alleged violations, and replaces and supersedes the previous Stipulated Enforcement Order dated August 10, 2011.

This Stipulation is intended to resolve disputed claims without the time and expense of legal proceedings and to avoid future disputes regarding the permissible uses on the Property until a discretionary Site Plan permit or Major Use Permit (MUP) is approved. This Stipulation is not intended to be an admission by any party on the merits of any alleged violations. The terms of this Stipulation are applicable to Covert Canyon, its successors and assigns, any of their agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Covert Canyon, and all persons acting in concert with or participating with Covert Canyon. This Stipulation and terms and conditions herein are Property specific, and are not standards for future sites owned by Covert Canyon and/or other applicants; each Site Plan permit is evaluated on a case by case basis.

I. ALLOWED USES

A. GENERAL

- 1 The provisions of SDCZO Sections 2720-2725 outline the allowed uses at the Property.
- 2 Covert Canyon shall comply with the requirements of the SDCCRO, Title 3, Division 6, Chapter 4 (County Noise Ordinance) including Section 36.404(a) at the Property.
- 3 All firearm activity at the Property shall comply with SDCCRO and the SDCZO.
- 4 This Stipulation shall not prevent Covert Canyon or anyone with written permission from Covert Canyon from engaging in free, non-commercial activities involving firearms discharge at any location on the Property, provided such activities:
 - a. Comply with SDCCRO section 33101 with respect to discharging a firearm at a reasonably safe distance from any occupied dwelling, house, residence, or other building;
 - b. Comply with SDCZO; and
 - c. Do not take place at the same time as any training activities.
- 5 There shall be no more than 45 people total on the Property at one time.
- 6 Covert Canyon shall comply with the Fire Protection Plan prepared by Firewise 2000 Inc. as redacted on October 27, 2015 ("Fire Protection Plan") and included herein (see exhibit C).

B. FIRST RESPONDER MEDIC TRAINING

1. Covert Canyon has a non-conforming use to conduct this training.
2. Covert Canyon may conduct this training in accordance with the authorization letter from COUNTY dated September 11, 2009 (see exhibit B):
 - a. Conduct training activities in a two day course to prepare first responders to evaluate and treat serious trauma, proper use of bandages, tourniquets and hemostatic agents;
 - b. Refrain from firearm use during training;
 - c. Limit participants to a maximum of 12 per class;

- d. Transport participants with Covert Canyon staff using 2-3 Sport Utility Vehicles; and
- e. Comply with SDCCRO and SDCZO.

C. GOVERNMENTAL MILITARY AND LAW ENFORCEMENT TRAINING

1. Firearms and associated training activities for government military and governmental law enforcement are allowed uses as Law Enforcement Services pursuant to SDCZO sections 2722, 6905, 1300, and 1346, and SDCCRO section 33.101 *et seq.* See exhibit A for a non-exhaustive list of offered trainings.
2. While a Site Plan permit for the Property is being processed and compliance measures are met on schedule as outlined in Section II below, Covert Canyon may conduct training on the Property in accordance with the following conditions. Covert Canyon shall:
 - a. Conduct all firearms training activities at least 150 yards from any occupied dwelling house, residence, or other building or any barn or other outbuilding used in connection therein pursuant to SDCCRO section 33.101 utilizing only existing shooting ranges and structures;
 - b. Delineate and maintain visibly marked property lines in accordance with the land survey described below;
 - c. Charge fees in advance and collect all fees for training activities through written contracts with recognized governmental military and recognized governmental law enforcement agencies; no walk-up participants will be accepted;
 - d. Notify all attendees in writing of transportation requirements at the time training classes are scheduled;
 - e. Notify all attendees prior to arrival that there will be a mandatory orientation including a safety review before every class;
 - f. Notify all attendees at the time of arrival of the risks associated with large vegetation fires which may occur in the immediate area and the emergency operations plan should a wildfire occur. Notifications and emergency operations shall be in accordance with the Fire Protection Plan (see exhibit C);
 - g. Limit ordnance: firearms shall not exceed 50 caliber and no tracers or other type of incendiary devices or explosives are allowed;
 - h. Limit the use of distraction and breaching devices in areas void of flammable or combustible material and to a maximum of 6 times per calendar year; and
 - i. In accordance with the compliance measures outlined in Section II below:
 - i. Submit a complete application that complies with SDCZO section 7150, and cooperate in the processing and issuance of a discretionary Site Plan permit for the uses described herein;
 - ii. Apply for and obtain building permits for the Guest Services/Classroom building, the 40 foot by 58 foot garage and all sea cargo containers at the Property;
 - iii. Apply for and obtain a building permit for the metal woodshed or reduce the size to less than 120 square feet or remove;
 - iv. Apply for and obtain a grading permit for the berms at the two

- square shooting ranges;
 - v. Complete the on-going maintenance and monitoring for Revegetation Plan PDS2010-3968-09-001; and
 - vi. Provide a land survey by a California licensed Land Surveyor and submit a plot plan to COUNTY that shows the location of the boundary lines for APN 521-130-08-00 and establishes the property lines between the Property and land owned by the USFS, specifically as it pertains to the berms surrounding the shooting range.
- 3 Allowable training schedule and limitations
- a. All training shall begin no earlier than 7:00 a.m. and shall cease by 7:00 p.m., Monday through Friday.
 - b. Training is prohibited on weekends and holidays; holidays are January 1st, the last Monday in May, July 4th, the first Monday in September, the fourth Thursday in November and December 25th.
 - c. Instructors, support staff and participants shall not stay overnight at the Property.
 - d. Participants shall leave the property at 7:00 p.m. or earlier.
- 4 Training participants
- a. Training shall be limited to eligible participants from the following agencies:
 - i. Border Patrol;
 - ii. Homeland Security;
 - iii. Immigration and Customs Enforcement;
 - iv. U.S. Marines;
 - v. U.S. Navy;
 - vi. U.S. Army;
 - vii. U.S. Coast Guard;
 - viii. County Sheriff and police agencies; and
 - ix. Any other military or law enforcement agency which is part of the local, state, or federal government.
 - b. Eligible participants are limited to members of the listed organizations, in addition to those members formally selected for service but not yet officially employed.
 - c. There shall be no more than 30 eligible participants excluding instructors and support staff at any training.
5. Records
- a. Covert Canyon shall keep and maintain records of all trainings held, including the contracts, the name and direct phone number of the coordinating governmental military or law enforcement representative, date and time of training, and number of participants; the names of participants and details of training may be redacted to maintain confidentiality.
 - b. All records shall be retained for at least five years.
 - c. Covert Canyon shall provide records to COUNTY within 72 hours upon request or at a COUNTY site inspection as outlined in section II below.

6. Weather watches and warnings
 - a. Covert Canyon shall monitor weather via the National Weather Service in advance of training activities and while hosting training activities.
 - b. Training activities shall not take place during the duration of any weather warnings posted by the National Weather Service applicable to the Alpine area or San Diego County Inland areas. These include but are not limited to:
 - i. Fire weather watch;
 - ii. Red Flag Warning;
 - iii. Winter storm watch;
 - iv. Winter storm warning;
 - v. Winter weather advisory;
 - vi. Thunderstorm warning;
 - vii. Lightening warning;
 - viii. Flood warning; and
 - ix. Flash flood warning.
 - c. If any wildfires occur within 5 miles of the Property all training activities shall cease immediately and Covert Canyon shall follow the procedures outlined in Appendix F of the Fire Protection Plan (see exhibit C).
 - d. Covert Canyon shall not construct, use, or maintain any open fire pits or ground fires at the Property; barbeques are allowed.
7. Transportation requirements include but are not limited to:
 - a. No more than a total of 45 cars shall be at the Property at one time;
 - b. Covert Canyon shall construct road improvements, turnouts and turnarounds on the entry/egress road to the Property in accordance with the Fire Protection Plan (see exhibit C);
 - c. Covert Canyon shall maintain High Glen Road in good condition free of ruts and obstructions;
 - d. Covert Canyon shall maintain road drainage structures on High Glen Road in good working order to prevent erosion;
 - e. In accordance with the Fire Protection Plan (see exhibit C) Covert Canyon shall conduct fuel modification along High Glen Road in coordination with COUNTY, County Fire Authority/ San Diego Rural Fire Protection District, and the United States Forestry Service ("USFS") which is to determine how much and whether or not USFS permits will be required.
8. Emergency services
 - a. Covert Canyon shall allow access to the Property for law enforcement services, fire, and/or emergency personnel to utilize any water resource available on the property at no cost, and/or store any equipment required to assist in fire prevention or suppression.
 - b. Covert Canyon shall allow the Property to be used as a base of operations during a fire emergency.

II. COMPLIANCE MEASURES

Covert Canyon shall complete the following to comply with the terms of this Stipulation

- A. Within 10 calendar days from the execution of the Stipulation, create a 300-foot Fuel Modification Zone acceptable to County Fire Authority/San Diego Rural Fire Protection District around all structures and maintain it thereafter;
- B. By October 31, 2015, schedule a site visit with COUNTY Landscape Architect and complete the items described in the May 6, 2014 letter from COUNTY related to Revegetation Plan PDS2010-3968-09-001;
- C. Cooperate in the processing and issuance of a discretionary Site Plan permit and associated CEQA documents and technical studies for the Governmental Military and Law Enforcement Training use described in this Stipulation, and provide any additional information required at COUNTY'S request within the specified timeframe.
- D. Within 60 calendar days from the execution of the Stipulation:
 1. Submit an application for building permits for the Guest Services/Classroom building, the 40 foot by 58 foot garage and all sea cargo containers at the Property;
 2. Submit a complete and adequate application suitable for evaluation and action for a discretionary Site Plan permit for the uses described herein;
 3. Submit a Noise Assessment Report prepared by COUNTY approved consultant addressing noise impacts from all training activities, including shooting ranges. The Noise Assessment Report must include calculations showing the worst-case noise levels generated by individual noise sources and cumulative noise sources. The Noise Assessment Report shall make recommendations for mitigation measures in reducing noise levels and showing compliance with the County Noise Ordinance; and
 4. Conduct and submit to COUNTY a survey and plot plan prepared by a California licensed Land Surveyor establishing the property lines between the Property and land owned by the USFS, specifically as it pertains to the berms surrounding the shooting ranges.
- E. Within 60 calendar days from the COUNTY's acceptance of the Noise Assessment Report, install wooden ricochet barriers and maintain earthen backstop berms in accordance with the Fire Protection Plan (see exhibit C) and Noise Assessment Report;
- F. Within 90 calendar days from the execution of the Stipulation:
 1. Submit an application and grading plans prepared by a California licensed civil engineer for a grading permit for all existing and proposed grading on the Property;
 2. Retro-fit the classroom building with ignition-resistant construction in accordance with the County Building Code and have an NFPA 13-D sprinkler system installed with backup power; and have the improvements inspected and approved by COUNTY and County Fire Authority/San Diego Rural Fire Protection District;
 3. Complete the fuel modification as outlined in the Fire Protection Plan (see exhibit C) with permission from the USFS; and
 4. Complete turn-outs, and road improvements along High Glen Road as outlined in the Fire Protection Plan (see exhibit C) and with permission and permitting from

the USFS.

- G. Within 120 calendar days from the execution of the Stipulation, implement the recommendations and mitigation measures in the approved Noise Assessment Report to COUNTY's satisfaction;
- H. Within 180 calendar days from the execution of the Stipulation, obtain building permits for all existing structures at the Property;
- I. Within 18 months from the execution of the Stipulation, obtain a grading permit for the grading done to create the berms at the two square shooting ranges on the Property;
- J. Within 24 months from the execution of the Stipulation, submit as-built grading plans and pass all required grading inspections and obtain final inspection on the grading permit;
- K. Within 365 calendar days from the execution of the Stipulation, complete all work authorized by the building permits, complete all required building inspections, and obtain a final inspection for all structures at the Property;
- L. By January 31, 2018 obtain final approval of the Site Plan permit for the Property; and
- M. Allow personnel from COUNTY or their designee to inspect the Property for compliance with Stipulation or Site Plan application at any time during operating hours.
- N. If Covert Canyon has already completed any of the requirements contained in this stipulation to the County's satisfaction, they will not be required to duplicate those efforts.

III. MONETARY RELIEF

- A. Within 30 calendar days from execution of the Stipulation, Covert Canyon shall submit \$1,975.80 of processing fees previously incurred on the Property and owed COUNTY. Payment shall be in the form of a cashier's check or money order made out to the County of San Diego and mailed or personally delivered to:

The County of San Diego
Department of Planning & Development Services
5510 Overland Ave, Ste 310
San Diego, CA 92123

- B. The remainder of the balance owed COUNTY, \$7,000.00, is immediately suspended, and shall only be imposed if Covert Canyon fails to comply with any term of this Stipulation. COUNTY agrees to notify Covert Canyon in writing if imposition of the fees will be sought and on what basis.
- C. Covert Canyon agrees to accounting of fees paid prior to this Stipulation pertaining to the MUP and related applications 12-D-07-0086991, PDS2007-3300-07-011, PDS2007-3910-0715002, PDS2009-3967-09-001, PDS2007-3921-07-002 in the amount of \$122,614.14; Covert Canyon shall not request a refund of prior fees.
- D. The parties shall pay their own attorneys' fees and any other costs associated with the creation of the Stipulation.
- E. Within 60 calendar days from execution of the Stipulation Covert Canyon shall submit any and all fees associated with the required discretionary Site Plan permit application, and shall remain current on their account thereafter.

IV. ENFORCEMENT

- A. This Stipulation will be deemed executed on the date the final signature is obtained on the document.
- B. In the event of default by Covert Canyon as to any term, payment, compliance measure, or condition under this Stipulation, the uses allowed by the Stipulation shall cease immediately and the following fees will be immediately due and payable to COUNTY:
 - a. The complete \$8,975.80 previously incurred on the Property, or balance thereof if partial payment has been made; and
 - b. Any additional fees incurred after the execution of the Stipulation relating to the processing the Site Plan permit and related permits.
- C. COUNTY shall be entitled to inspect the Property for compliance with Stipulation or Site Plan application during operating hours.
- D. COUNTY shall be entitled to pursue any and all remedies provided by law for the enforcement of this Stipulation.
- E. Any amount in default shall bear interest at 10% per year from the date of default until paid in full.
- F. Nothing in this Stipulation shall prevent COUNTY from pursuing any remedies as provided by law to subsequently enforce this Stipulation or the provisions of the SDCCRO or SDCZO, including criminal prosecution and/or civil penalties.
- G. When more than one person is responsible for a violation each responsible person may be separately assessed. A person may be found responsible for different violations, or repeat violations, which are subject to separate cumulative maximums.
- H. Covert Canyon agrees that any act, intentional or negligent, or any omission or failure by their contractors, successors, assigns, partners, members, agents, employees or representatives to comply with the requirements set forth in the Stipulation will be deemed to be the act, omission, or failure of Covert Canyon.
- I. In the event of default by Covert Canyon as to any term, payment, compliance measure or condition under this Stipulation COUNTY has a right to rescind this Stipulation.
- J. In the event a Site Plan permit is abandoned or not issued for any reason, Covert Canyon assumes the risk for and is liable for any costs incurred as a result of performing any action outlined in this Stipulation.

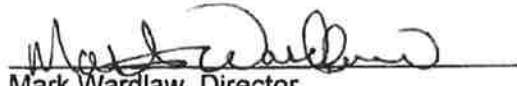
V. DEFENSE AND INDEMNIFICATION

- A. Covert Canyon shall Defend and indemnify COUNTY, its agents, officers and employees from any claim, action, liability or proceeding against COUNTY to attack, set aside, void or annul the Stipulation or Site Plan permit or any of the proceedings, acts or determinations taken, done or made as a result of COUNTY'S processing and/or approval of the Stipulation or Site Plan permit. Covert Canyon's obligation to defend and indemnify under this Stipulation shall apply to any lawsuit or challenge against COUNTY alleging failure to comply with the California Environmental Quality Act or with the requirements of any other federal, state, or local laws, including but not limited to general plan and zoning requirements. Covert Canyon's obligations under this

Stipulation to defend and indemnify COUNTY shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against COUNTY, and/or all settlement costs, which arise out of COUNTY's processing and/or approval of the Stipulation or Site Plan permit.

- B. The COUNTY shall notify Covert Canyon or its representative promptly of any claim, action or proceeding and cooperate fully in the defense. Upon receipt of such notification, Covert Canyon shall assume the defense of the claim, action, or proceeding, including the employment of counsel reasonably satisfactory to COUNTY and Covert Canyon, and the prompt payment of the attorneys' fees and costs of such counsel. In the event of a disagreement between COUNTY and Covert Canyon over litigation issues, COUNTY shall have the authority to control the litigation and make litigation decisions, including but not limited to, settlement or other disposition of the matter. If COUNTY reasonably determines that having common counsel would present such counsel with a conflict of interest, or if Covert Canyon fails to promptly assume the defense of the claim, action, or proceeding or to promptly employ counsel reasonably satisfactory to COUNTY, then COUNTY may employ separate counsel to represent or defend the COUNTY, and Covert Canyon shall pay the reasonable attorneys' fees and costs of such counsel within 30 days of receiving an itemized billing therefor. At its sole discretion, COUNTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve Covert Canyon of any obligation imposed by this Stipulation.
- C. Covert Canyon's obligations to defend and indemnify under this Stipulation shall apply whether or not there is concurrent, active, or passive negligence on the part of COUNTY, except that Covert Canyon's obligation to indemnify shall not apply where the court finds there is gross negligence or willful misconduct by COUNTY. Covert Canyon's obligations under this Stipulation shall be effective regardless of whether any or all Site Plan permit approvals and/or actions by COUNTY regarding the Site Plan permit remain valid or are invalidated by any court.
- D. Failure to promptly defend or indemnify COUNTY is a material breach which shall entitle COUNTY to all remedies available under law, including but not limited to specific performance and damages. Moreover, failure to defend or indemnify shall constitute grounds upon which COUNTY may rescind this Stipulation and its approval(s) associated with the Stipulation and/or Site Plan permit, and shall constitute a waiver by Covert Canyon of any right to proceed with the Site Plan permit or any portion thereof.
- E. In the event of any claim, action or proceeding against COUNTY arising out of or relating to this stipulation or Site Plan Permit application, while continuing to fulfill its defense and indemnification obligations, Covert Canyon shall have the sole and exclusive right to withdraw the Site Plan Permit application.
- F. Covert Canyon shall be and remain personally obligated to all of the terms of this Stipulation, notwithstanding any attempt to assign, delegate or otherwise transfer all or any of the rights or obligations of this Stipulation, and notwithstanding a change in or transfer of ownership of the Property (or any interest therein). However, Covert Canyon

may be released from such obligations if Covert Canyon obtains the COUNTY's prior written consent to such transfer, which consent shall not be unreasonably withheld.



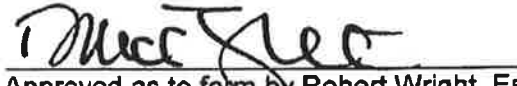
Mark Wardlaw, Director
Department of Planning & Development Services

Date: 10.27.15



Marc Halcon, Officer
Covert Canyon, LLC

Date: 10/27/15



Approved as to form by Robert Wright, Esq.
Attorney for Covert Canyon, LLC

Date: 10/27/15

Enclosures:

- Exhibit A: offered training classes for governmental military and law enforcement
- Exhibit B: letter from COUNTY regarding first responder medic training
- Exhibit C: redacted Fire Protection Plan dated October 27, 2015 pages 1-41 and appendices A-G