

RESOLUTION NUMBER R- 302404
DATE OF FINAL PASSAGE FEB 27 2007

WHEREAS, CHAMPA PHANTHAVILAY, Applicant/Owner/Permittee, filed an application with the City of San Diego for a Tentative Map No. 9000 to create five lots on an existing vacant 1.05-acre site known as the Champa's Tentative Map project, located on the west side of 66th Street, west of Leghorn Avenue, and legally described as Lot 11 of Encanto, Map 749, in the SESDPD-SF-5000 zone; and

WHEREAS, the Map proposes the subdivision of a 1.05-acre site into five (5) lots for residential development; and

WHEREAS, the project complies with the requirements of a geological reconnaissance report pursuant to the Subdivision Map Act and Section 144.0220 of the Municipal Code of the City of San Diego; and

WHEREAS, the Applicant/Owner/Permittee has requested the vacation of a slope easement granted to the City of San Diego as described and shown in Exhibit "A" [Easement] as part of the project; and

WHEREAS, California Streets and Highways Code section 8334(a) provides that the legislative body of a local agency may summarily vacate an excess right-of-way of a street or highway not required for street or highway purposes.

WHEREAS, San Diego Municipal Code section §125.0910(b)(1) provides that a public right-of-way may be summarily vacated if it does not contain public utility facilities, does not contain active public utility facilities, or contains public utility facilities that would not be affected by the vacation and if the public right-of-way, or portion of the public right-of-way, is excess public right-of-way and is not required for street or highway purposes; and

WHEREAS, Subdivision Map Act Section 66499.2 ½ provides that the filing of the final map shall constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data or other official record creating these public streets or public easements and certified to on the map by the clerk of the legislative body or the designee of the legislative body approving the map; and

WHEREAS, the Easement is excess right of way not required for street or highway purposes; and

WHEREAS, there are no other public facilities located within the Easement; and

WHEREAS, the City Council finds that:

(a) there is no present or prospective use for the Easement, either for the purpose for which it was originally acquired, or for any other public use of a like nature that can be anticipated;

(b) the public will benefit from the vacation through improved utilization of land;

(c) the vacation is consistent with the General Plan or an approved Community Plan; and

(d) the public facility or purpose for which the Easement was originally acquired will not be detrimentally affected by this vacation; and

WHEREAS, Negative Declaration No. 5455 has been completed in compliance with the California Environmental Quality Act and state CEQA Guidelines, and the said Negative Declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the final Negative Declaration has been reviewed and considered prior to approving the project; 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 and where a public hearing was required by law implicating due process rights of individuals affected by the

decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, this matter was set for public hearing on February 27, 2007, testimony having been heard, evidence having been submitted, and the City Council having fully considered Tentative Map No. 9000 and pursuant to Sections 125.0440 and 125.0430 of the Municipal Code of the City of San Diego and Subdivision Map Act Section 66426 et. seq., received for its consideration written and oral presentations, evidence having been submitted, and heard testimony from all interested parties at the public hearing, and the City Council having fully considered the matter and being fully advised concerning the same 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 Tentative Map No. 9000:

1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan (Land Development Code Section 125.0440.a and State Map Action Sections 66473.5, 66474(a), and 66474(b)).
2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code (Land Development Code Section 125.0440.b).
3. The site is physically suitable for the type and density of development (Land Development Code Section 125.0440.c and State Map Act Sections 66474(c) and 66474(d)).
4. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat (Land Development Code Section 125.0440.d and State Map Act Section 66474(e)).
5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare (Land Development Code Section 125.0440.e and State Map Act Section 66474(f)).
6. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through or use of property within the

proposed subdivision (Land Development Code Section 125.0440.f and State Map Act Section 66474(g)).

7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities (Land Development Code Section 125.0440.g and State Map Act Section 66473.1).
8. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources (Land Development Code Section 125.0440.h and State Map Act Section 66412.3).

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

BE IT FURTHER RESOLVED, that based on the Findings hereinbefore adopted by the City Council, Tentative Map No. 9000, is hereby granted to CHAMPA PHANTHAVILAY, Applicant/Owner/Permittee, subject to the following conditions:

GENERAL

1. This Tentative Map will expire February 27, 2010.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
3. The applicant 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, including, but not limited to, any 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 applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant 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, applicant 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 applicant 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 applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

ENGINEERING

4. All driveways and curb openings shall comply with City Standard Drawings G-14B, G-16 and SDG-100 on all residential lots.
5. Prior to the issuance of any construction permit, the Subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
6. Prior to the issuance of any construction permit, the Subdivider shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.
7. The drainage system proposed for this subdivision, as shown on the approved tentative map, is private and subject to approval by the City Engineer.
8. The subdivider shall obtain a 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 in a manner satisfactory to the City Engineer.
9. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the subdivider to provide the right-of-way free and clear of all encumbrances and prior easements. The subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
10. The subdivider shall underground existing and/or proposed public utility systems and service facilities in accordance with the San Diego Municipal Code.
11. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01(NPDES General Permit No. CAS000002 and CAS0108758), 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 SWRC.
12. 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 grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99 08 DWQ.
13. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.

14. The Subdivider shall ensure that all on-site utilities serving the subdivision shall be undergrounded with appropriate permits. The applicant shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.
15. Conformance with the "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.
All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.

MAPPING

16. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
17. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
18. The Final Map shall:
 - a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
 - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

SEWER AND WATER

19. 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.
20. 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.

GEOLOGY

21. Prior to the issuance of a grading permit, a geotechnical report shall be submitted and approved by the City Engineer in accordance with the "City of San Diego's Technical Guidelines for Geotechnical Reports."

LANDSCAPE

22. 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.
23. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A," on file in the Office of the Development Services Department.
24. 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.
25. 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, on file in the Office of the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as "landscaping area."
26. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards 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 the Development Services Department. Construction plans 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.
27. Prior to issuance of Final Inspection, 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 shall be obtained for the installation, establishment, and on-going maintenance of all street trees.
28. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

29. The Permittee or subsequent owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.
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 City manager within 30 days of damage or Certificate of Occupancy.

TRANSPORTATION

31. As a condition of any permit, this project shall comply with all current street lighting standards according to the City of San Diego Street Design Manual (Document No. 297376, filed November 25, 2002) and the amendment to Council Policy 200-18 approved by City Council on February 26, 2002 (Resolution R-296141) satisfactory to the City Engineer.

INFORMATION:

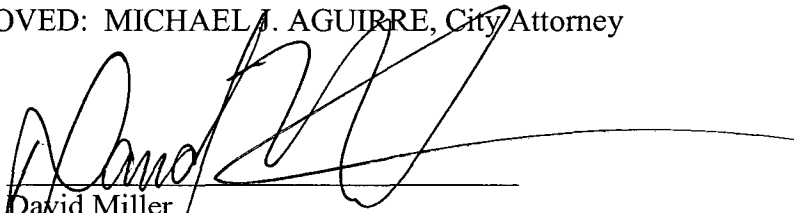
- The approval of this Tentative Map by the CITY COUNCIL of the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
- If the subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map, may protest the imposition within 90 days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.
- Where in the course of development of private property, public facilities are damaged or removed the property owner shall at no cost to the City obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer. Municipal Code Section 142.0607.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, as follows:

1. Certifies that the information contained in Negative Declaration 5455 for Project No. 5455 has been completed in compliance with the California Environmental Quality Act and State CEQA Guidelines, and that said Negative Declaration reflects the independent judgment of the City of San Diego as Lead Agency.
2. States for the record that the final Negative Declaration has been reviewed and considered prior to approving the project.
3. Adopts the final Negative Declaration.
4. That the slope easement granted to the City of San Diego as described and shown in Exhibit "A," and on file in the office of the City Clerk as Document No. RR-302404, which are by reference incorporated herein and made part hereof, is ordered vacated.
5. That the City Clerk shall cause a certified copy of this resolution, with attached exhibits attested by him under seal, to be recorded in the office of the County Recorder.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


David Miller
Deputy City Attorney

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Or.Dept:DSD
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