

203D  
9/17/07

RESOLUTION NUMBER R- 302999

DATE OF FINAL PASSAGE SEP 17 2007

A RESOLUTION APPROVING VESTING TENTATIVE  
MAP NO. 372429, EASEMENT VACATION NO. 372423  
AND PUBLIC RIGHT-OF-WAY VACATION NO.  
372426 FOR MONTE VERDE PROJECT NO. 6563.

WHEREAS, COSTA VERDE HOTEL, LLC, Applicant/Subdivider, and DAVID A. HAMMAR, Engineer, submitted an application with the City of San Diego for a Vesting Tentative Map [VTM] No. 372429, for the subdivision of a 4.77 acre site into four lots for the construction of 560 residential condominium units [the Project]. The Project site is located at 8995 Costa Verde Boulevard, legally described as Lot 12, Costa Verde, according to Map No. 12045, filed April 18, 1988 and as corrected by a certificate of correction recorded July 23, 1993 as document 93-470224 of official records, within the RS-1-14, Parking Impact Overlay Zone, the Costa Verde Specific Planning Area and Community Plan Implementation Overlay "A" Zones within the University Community Plan area; and

WHEREAS, the Map proposes the subdivision of a 4.77 acre site into four (4) lots for a 560 unit residential condominium development; and

WHEREAS, An Environmental Impact Report [EIR] No. 6563 was prepared in accordance with the California Environmental Quality Act [CEQA]; and

WHEREAS, the Project complies with the requirements of a preliminary soils and/or 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 subdivision is a condominium project as defined in Section 1350 et seq. of the Civil Code of the State of California and filed pursuant to the Subdivision Map Act. The total number of condominium dwelling units is 560; and

WHEREAS, on March 15, 2007, the Planning Commission of the City of San Diego considered VTM No. 372429, Public Right of Way [PROW] No. 372426 and Easement Vacation No. 372423, and pursuant to Resolution No. 4245-PC voted to recommend to the City Council to accept the project's Final Environmental Impact Report No. 6563, Reduced Project Alternative: 21-Story, of which the maximum building would be 21-stories and the maximum number of units would be 408;

WHEREAS, the City of San Diego Water Department has prepared a Water Supply Assessment Report and the City Council finds there is sufficient water supply to serve existing demands, projected demands of the project, and future water demands within the service area in normal and dry year forecasts during a 20-year projection pursuant to the Subdivision Map Act Section 66473.7; and

WHEREAS, on September 17, 2007, the Council of the City of San Diego considered the Project, VTM No. 372429, PROW No. 372426 and Easement Vacation No. 372423, and pursuant to Sections 125.0440 and 125.0430 of the Municipal Code of the City of San Diego and Subdivision Map Act Section 66428, 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; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego, that it adopts the following findings with respect to VTM No. 372429 and PROW No. 372426 and Easement Vacation No. 372423:

A. FINDINGS FOR VESTING TENTATIVE MAP APPROVAL

1. The proposed 560 condominium unit 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 560 condominium unit 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 560 condominium unit 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)).
5. The design of the 560 condominium unit 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)).
6. The design of the proposed 560 condominium unit 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).
7. The decision maker has considered the effects of the proposed 560 condominium unit 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).
8. The property contains rights-of-way and public service easements which must be vacated summarily and/or pursuant to the Map Act to implement the final map in accordance with San Diego Municipal Code section 125.0430.
9. The design of the proposed 560 condominium unit subdivision may, as described in the EIR, have significant environmental effects which are not avoided or substantially lessened, nonetheless the decision maker finds that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the project alternatives identified in the EIR as well as other alternatives or mitigation measures which would reduce the following impact to below a level of significance and the proposed subdivision would provide specific overriding economic, social and other

considerations, as described in the Candidate Findings and Statement of Overriding Considerations, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference. (Land Development Code Section 125.0440(d), State Map Act Section 66474.01 and CA Public Resources Code section 21081).

10. The requirements of Government Code §66473.7 are not applicable under subdivision (i) of that statute, as this is a residential project where the immediately contiguous properties surrounding the Project are, or previously have been developed for, urban uses. Furthermore, based on the water supply assessment, the Water Director's statements to the Council, and other documents in the record, and notwithstanding the Natural Resources Defense Council et.al. v. Dirk Kempthorne, et.al (Case #1:05-cv-01207-OWW-GSA) case (discussed by the City Council and City Attorney at the September 17, 2007 public hearing), the City Council concludes that substantial evidence supports a determination that the water supply for the Project will be adequate and the requirements of Government Code §66473.7 are in compliance.
11. That said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

B. FINDINGS FOR SUMMARY PUBLIC RIGHT OF WAY VACATION APPROVAL (CA Streets & Highways Code §8830 et seq., and Municipal Code §125.0910)

1. The right of way does not contain public utility facilities or active public utility facilities, or contains public utility facilities that would not be affected by the vacation, and the portion of the public right-of-way is excess and not required for street or highway purposes, or for a period of five consecutive years the street or highway has been impassable for vehicular travel and public funds have not been expended for maintenance on it during such period, or the public right-of-way has been superseded by relocation and the vacation would not cut off all access to an individual property that, before relocation, adjoined the public right-of-way.
2. The street or highway has been superseded by relocation.
3. From and after the date this resolution is recorded, the street, highway or right-of-way no longer constitutes a street, highway or right-of-way.

C. FINDINGS FOR SUMMARY EASEMENT VACATION APPROVAL (CA Streets & Highways §8830, and Municipal Code §125.1010)

1. The public service easement does not contain public utility facilities or active public utility facilities, and it has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed abandonment, or the easement has been superseded by relocation and there are no other public facilities located within it.

2. The easement has been superseded by relocation and there are no other public facilities located within the easement.
3. From and after the date this resolution is recorded, the public service easement in question shall no longer constitute a public service easement.

D. FINDINGS FOR PUBLIC RIGHT OF WAY VACATION APPROVAL

1. There is no present or prospective public use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated; and
2. The public will benefit from the action through improved use of the land made available by the vacation; and
3. The vacation does not adversely affect any applicable land use plan or; and
4. The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.

E. FINDINGS FOR EASEMENT VACATION APPROVAL

1. There is no present or prospective public use for the easement, either for the facility or purpose for which it was originally acquired or for any other public use of a like nature that can be anticipated; and
2. The public will benefit from the action through improved utilization of the land made available by the abandonment; and
3. The vacation is consistent with any applicable land use plan; and
4. The public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the vacation or the purpose for which the easement was acquired no longer exists.

The facts contained in the record supporting this Resolution support these vacations under any or all of the above types of procedures. In addition, they may be effectuated by the filing of the final map pursuant to the Subdivision Map Act (Government Code §66434(g)).

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), the following public service easements and rights-of-way located within the Project boundaries as shown in VTM NO. 372429, shall be vacated, contingent upon the recordation of the approved final map for the Project:

- a. The drainage and slope easement granted per deed recorded May 1, 1969, file/page 76232.
- b. The drainage, water and sewer easement granted per deed recorded September 3, 1987, file/page 87-500962.
- c. The pedestrian and non-motor vehicle right-of-way granted per deed recorded October 16, 1990, file/page 1990-562803.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and VTM No. 372429 and PROW No. 372426 and Easement Vacation No. 372423 is granted to COSTA VERDE HOTEL, LLC, subject to the conditions attached hereto and made a part hereof.

BE IT FURTHER RESOLVED, that, based on the Findings hereinbefore adopted by the City Council, VTM No. 372429 and PROW No. 372426 and Easement Vacation No. 372423, is hereby granted to COSTA VERDE HOTEL, LLC, Subdivider/Subdivider, subject to the following conditions:

**GENERAL**

1. This VTM will expire on September 17, 2010.
2. The final map shall comply with the conditions of Planned Development Permit [PDP] No. 10761, Site Development Permit [SDP] No. 372422, and PROW Permit No. 464724.
3. 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.
4. A Final Map shall be recorded in the Office of the County Recorder, prior to the Vesting Tentative Map expiration date.
5. The Final Map shall conform to the provisions of PDP No. 10761, University Community Plan Amendment No. 10763, SDP No. 372422, PROW Permit No. 464724, Easement Vacation No. 372423 and PROW Vacation No. 372426.
6. Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding, including those actions brought pursuant to Government Code §66473

et.seq., against any Indemnified Party to attack, set aside, void, or annul City's approval of this Project, which action is brought within the time period provided for in Government Code §66499.37. City shall promptly notify subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, and defends the action in good faith. Subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the Subdivider.

7. The property contains public rights-of-way and service easements which must be vacated to implement the Final Map in accordance with San Diego Municipal Code 125.0430.
8. Public access easements shall be indicated on the final map granting twenty-four hour public access through the site on all pedestrian walk ways, to the satisfaction of the City Engineer.

#### **AFFORDABLE HOUSING**

9. Prior to recordation of the Final Map, the Subdivider 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) by entering into an agreement with the San Diego Housing Commission to assure the affordable units are provided and occupied by eligible households. Subject to approval of an affordable housing agreement with the San Diego Housing Commission, the Subdivider intends to meet this requirement by providing 56 units of affordable rental housing at 65% of the Area Median Income within Subdivider's portfolio of properties located in Central Subarea 2 of the University Community Plan.

#### **ENGINEERING**

10. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.
11. Prior to the recordation of the Final Map, the Subdivider shall remove the existing sidewalk and construct a minimum 5-foot wide or greater, non-contiguous sidewalk, along the Project frontage on La Jolla Village Drive and Genesee Avenue, per Standard Drawings G-7 and G-9.
12. Prior to the recordation of the Final Map, the Subdivider shall provide and improve a minimum 5 feet pedestrian non motorized vehicle easement within the subdivision as shown on the Exhibit "A," satisfactory to the City Engineer.

13. Prior to the recordation of the Final Map, the Subdivider shall dedicate 3.5 feet to provide a minimum 5 feet non contiguous sidewalk along La Jolla Village Drive and Genesee. The face of curb to property line shall be 13.5 feet.
14. Prior to the issuance of a Final Map, taxes must be paid on this property pursuant to section 66492 of the Subdivision Map Act. A tax certificate, recorded in the office of the County Recorder, must be provided to satisfy this condition.
15. This subdivision is in a community plan area designated in the General Plan as Planned Urbanizing. As such, special financing plans have been, or will be, established to finance the public facilities required for the community plan area.

Therefore, in connection with Council approval of the final map, the Subdivider shall comply with the provisions of the financing plan then in effect for this community plan area, in a manner satisfactory to the Development Services Manager. This compliance shall be achieved by entering into an agreement for the payment of the assessment, paying a Facilities Benefit Assessment or such other means as may have been established by the City Council.

16. Prior to the issuance of grading permits, a geotechnical investigation report shall be required that specifically addresses the proposed grading plans and cites the City's Job Order No. and Drawing No.. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over-excavation depth, and limits of remedial grading.
17. If Subdivider advances funds toward the construction of a new fire station in University City, Subdivider shall be entitled to seek FBA reimbursement by entering into a reimbursement agreement with the City and/or a participation agreement with other benefiting property owners, or by other appropriate means, prior to commencement of the Project.
18. The Subdivider shall underground existing and/or proposed public utility systems and service facilities in accordance with the San Diego Municipal Code.
19. The Subdivider shall ensure that all onsite utilities serving the subdivision shall be undergrounded with the appropriate permits. The Subdivider 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.
20. Prior to the issuance of the first building permit, exclusive of a building permit to construct a foundation for the parking garage for the first and second towers, the Subdivider shall, at its option, either (a) contribute \$554,000.00 (which includes a 35% contingency and a 10% escalation) into the appropriate Super Loop Transnet Fund for station construction at Judicial and Golden Haven, or, in the alternative, Subdivider shall have the option to bond and build the Super Loop improvements for



station construction at Judicial Drive and Golden Haven, in a manner satisfactory to the City Engineer. Further, the Subdivider shall participate in and not oppose the formation of a special assessment district, or other financing mechanism, for the construction of Super Loop bus transit stations and/or ongoing operation for the Super Loop Transit Project operated by SANDAG and MTS.

21. The Subdivider shall pay the Project's fair share contribution for the proposed University City High School Field Renovation Project upon approval of the Project into the North University City Facilities Benefit Assessment program. The Owner/Permittee shall not oppose its inclusion in the North University City Facilities Benefit Assessment program.
22. The Subdivider 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 the City Council on February 26, 2002 (Resolution R-296141) satisfactory to the City Engineer. This may require, but not be limited to, installation of new street light(s), adding light from low pressure to high pressure sodium vapor and/or upgrading wattage.
23. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
24. 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**

25. "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).
26. "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."
27. 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.

## **WATER**

28. The Subdivider shall provide a letter, to the Development Project Manager, agreeing to prepare CC&Rs for the operation and maintenance of all private water facilities that serve or traverse more than a single condominium unit or lot.
29. The Subdivider shall provide acceptable water easements for all public water facilities located outside of fully improved public rights-of-way, in a manner satisfactory to the Water Department Director and the City Engineer.
30. The Subdivider 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. Water facilities as shown on the approved tentative map shall be modified at final engineering to comply with standards.
31. The Subdivider shall design and construct two parallel 12-inch water facilities in Costa Verde Boulevard, in a manner satisfactory to the Water Department Director and the City Engineer.

## **WASTEWATER**

32. The Subdivider shall install all off-site, new and replacement, sewer facilities necessary to serve the proposed development as required by the accepted sewer study.
33. The Subdivider shall design all proposed public sewer facilities, and prepare necessary improvement drawings, according 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.
34. 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.

35. Prior to the approval of any building and/or public improvement permits, the Subdivider shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot (or unit) will have its own sewer lateral or provide CC&R's for the operation and maintenance of all on site private sewer facilities that serve more than one lot (or unit).
36. To the extent that the required sewer improvements benefit other projects, the Subdivider shall be entitled to, but not necessarily obligated to, seek reimbursement by way of entering into a Reimbursement Agreement with the City or by applying for a Cost Reimbursement District, consistent with either Council Policy 400-07 or Municipal Code §142.0680 or by other appropriate means.
37. Pursuant to §66473.7(b)(1), a sufficient water supply shall be available for the proposed development.

## **GEOLOGY**

38. 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.”
39. An updated geotechnical report will be required as grading plans are developed for the Project. The geotechnical consultant must review, sign and stamp the grading plans as part of the plan review and grading permit issuance process. A Final As-Built Report is required within 15 days of completion of grading operations.

## **INFORMATION:**

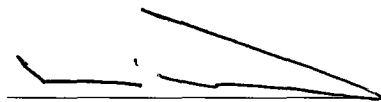
- The approval of this Tentative Map by the Council of the City of San Diego does not authorize the Subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
- This development may be subject to the payment of a park fee in accordance with the San Diego Municipal Code, which specifies park fees applicable in the University Community Plan area. This property is also subject to a building permit park fee in accordance with the San Diego Municipal Code.
- This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.
- This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by Education Code Section 17620, in accordance with procedures established by the Director of Building Inspection.
- 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.

APPROVED:

By

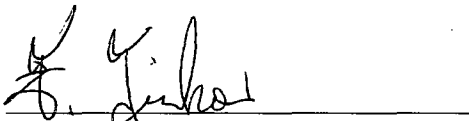


Mike Westlake  
Program Manager

MW:tpd  
R-2007-1312  
MMS#5046  
Job Order No. 420908

APPROVED AS TO FORM:

By:



Felix M. Tinkov, Esq.  
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