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RESOLUTION NUMBER R- 303270

DATE OF FINAL PASSAGE DEC -4 2007

WHEREAS, San Diego Unified School District, a school district organized and existing under the laws of the State of California, and COMM 22, LLC [collectively, the Applicant/Subdivider], and Robert C. Haynes, Engineer, submitted an application to the City of San Diego for a vesting tentative map, public right-of-way vacation, and easement vacation (Vesting Tentative Map No. 415852, Public Right-of-Way Vacation No. 415855 and Easement Vacation No. 454297) for the subdivision of existing lots into four lots for the COMM 22 project [Project], located at 2101, 2107, 2145 Commercial Street and 1826 Irving Avenue, (see attached legal description, Exhibit "B"), in the Southeastern San Diego Community Plan area, in the CC-3-5 zone; and

WHEREAS, the applicant seeks to waive the requirement to underground existing overhead utilities, pursuant to Council Policy 600-25; and

WHEREAS, California Streets and Highways Code section 8330 et seq. and San Diego Municipal Code section 125.0910, in conjunction with the findings of Section 125.0941, provide a procedure for the vacation of a public right-of-way by City Council resolution;

WHEREAS, the applicant/subdivider, as the affected property owner, has requested a vacation of public rights-of-way running along a portion of Irving Avenue and 22nd Street adjacent to the Applicant/Subdivider's property, as specifically described in Exhibit "A" as shown on Vesting Tentative Map No. 415852, specifically shown on Sheet 4 of 8;

WHEREAS, the Map proposes the subdivision of a 4.58-acre site into four lots; and

WHEREAS, on October 11, 2007, the Planning Commission of the City of San Diego considered Vesting Tentative Map No. 415852, Public Right-of-Way Vacation No. 415855, and Easement Vacation No. 454297, and pursuant to Resolution No. 4323-PC voted to recommend City Council approval; and

WHEREAS, the project complies with the requirements of a preliminary soils and/or geological reconnaissance report pursuant to the Subdivision Map Act and San Diego Municipal Code section 144.0220; and

WHEREAS, the subdivision of lot 7 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 units is seventeen; 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, the matter was set for public hearing on DEC - 4 2007, testimony having been heard, evidence having been submitted, 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 Vesting Tentative Map No. 415852:

1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable general plan, specific plans and other applicable land use plans (Land Development Code [LDC] section 125.0440(a) and Subdivision Map Act 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 (LDC section 125.0440(b));
3. The site is physically suitable for the proposed type and density of development (LDC section 125.0440(c) and Subdivision Map Act Sections 66474(c) and 66474(d));
4. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat or cause serious public health problems (LDC section 125.0440(d) and Subdivision Map Act Section 66474(e));
5. The design and types of subdivision improvements will not be detrimental to the public health, safety, and welfare (LDC section 125.0440(e) and Subdivision Map Act Section 66474(f));
6. The design and the types of subdivision improvements will not conflict with public easements for access through or use of property within the proposed subdivision (LDC section 125.0440(f) and Subdivision 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 in the subdivision consistent with the requirements of the California Government Code Section 66473.1 (LDC section 125.0440(g) and Subdivision Map Act Section 66473.1);
8. The City Council has considered the effects of the proposed subdivision on the housing needs of the region and those needs are balanced against the needs for public services and the available fiscal and environmental resources (LDC section 125.0440(h) and Subdivision Map Act Section 66412.3); and,
9. Discharge of waste from the proposed subdivision would not violate existing requirements prescribed by the San Diego Regional Water Quality Control Board.

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Public Right-of-Way Vacation No. 415855:

1. The vacation of these drainage and sewer easements are made under the provisions and authority found in Section 8300 et seq. of the California Streets and Highways Code and Subdivision Map Act section 66499.20 1/2;
2. 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;
3. The public will benefit from the action through improved use of the land made available by the vacation;
4. The vacation does not adversely affect any applicable land use plan; and,
5. The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Easement Vacation No. 454297:

1. The vacation of these drainage and sewer easements are made under the provisions and authority found in Section 8300 et seq. of the California Streets and Highways Code and Subdivision Map Act section 66499.20 1/2;
2. There is no present or prospective use for the drainage and sewer easements for which the drainage and sewer easements were originally acquired, or for any other public use of a like nature that can be anticipated;
3. The public will benefit from the vacation through improved utilization of land made available by the abandonment;
4. The vacation of the drainage and sewer easements is consistent with any applicable land use plan; and
5. The drainage and sewer easements for which the easements were originally acquired will not be detrimentally affected by this abandonment, or the purpose for which the easements were acquired no longer exists.

BE IT FURTHER RESOLVED, that the above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the City Council has considered the General Plan, the applicable Community Plan and all other applicable land use plans prior to granting these drainage and sewer easement vacations.

BE IT FURTHER RESOLVED, that as a condition of this approval, the Applicant/Subdivider shall ensure that any and all deeds or conveyances of title to or an interest in the property are subject to, and governed by, the reservations and exceptions recited in this resolution and the deed or conveyance shall contain a recital to that effect.

BE IT FURTHER RESOLVED, that Vesting Tentative Map No. 415852 is granted to the Applicant/Subdivider subject to all attached conditions which are made a part of this resolution by this reference.

BE IT FURTHER RESOLVED, That the public rights-of-way, as described and referenced herein, are ordered vacated, contingent upon the recordation of the approved final map for the project.

BE IT FURTHER RESOLVED, that pursuant to the California Government Code, the following public service easements, located within the project boundaries as shown in Vesting Tentative Map No. 415852, collectively referred to herein as Easement Vacation No. 454297 are ordered vacated, contingent upon the recordation of the approved final map for the project:

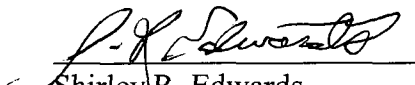
- a. A drainage easement granted to the City of San Diego, recorded May 2, 1930 in Book 1752 of Deeds, Page 469.
- b. A drainage easement granted to the City of San Diego, recorded December 14, 1948 in Book 3049, Page 107.
- c. A sewer easement granted to the City of San Diego, recorded January 10, 1949 in Book 3074, Page 359.
- d. A drainage easement granted to the City of San Diego, recorded May 24, 1949 in Book 3205, Page 383.

- e. A sewer easement granted to the City of San Diego, recorded May 24, 1949 in Book 3205, Page 386.

BE IT FURTHER RESOLVED, 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 consistent with the conditions and findings applicable herein.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Shirley R. Edwards
Chief Deputy City Attorney

SRE:pev

10/16/07

11/29/07 COR.COPY

Or.Dept:DSD

R-2008-338

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CONDITIONS FOR VESTING TENTATIVE MAP NO. 415852/
PUBLIC RIGHT-OF-WAY VACATION NO. 415855/
EASEMENT VACATION NO. 454297

COMM 22 PROJECT

ADOPTED BY RESOLUTION NO. R- 303270 ON DEC - 4 2007

GENERAL

1. This Vesting Tentative Map will expire DEC 04 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. Prior to the Vesting Tentative Map expiration date, a Final Map to consolidate the existing lots into one lot shall be recorded in the Office of the County Recorder.
4. The Final Map shall conform to the provisions of Site Development Permit No. 415853/Planned Development Permit No. 454025/Conditional Use Permit No. 431367.
5. The Applicant/Subdivider 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 and all actions to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City, acting through the City Attorney, will promptly notify Applicant/Subdivider of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Applicant/Subdivider shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City, acting through the City Attorney, 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/Subdivider 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, acting through the City Attorney, 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/Subdivider shall not be required to pay or perform any settlement unless such settlement is approved by Applicant/Subdivider.

6. The property contains a right-of-way and easements which must be vacated to implement the Final Map in accordance with San Diego Municipal Code section 125.0430.

AFFORDABLE HOUSING

7. Prior to recording the Final Map, the Applicant/Subdivider shall enter into an Affordable Housing Agreement with the Housing Commission to provide affordable housing units in compliance with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code).

STREETS DIVISION

8. Prior to the issuance of any improvement or grading permits the Applicant/Subdivider shall assure a drainage easement is granted over the 15 foot box culvert between Harrison Avenue and 22nd Street. The easement shall run parallel to Commercial Street and the width shall be from the northern property line to the parking structure wall.
9. Prior to the issuance of any construction, improvement or grading permits, the Applicant/Subdivider shall assure by permit and bond the installation of a cleanout on the box culvert at approximately station 18+00. The location of the cleanout shall be to the satisfaction of the City Engineer.
10. Prior to the issuance of any construction, improvement or grading permits the Applicant/Subdivider shall enter into an Encroachment and Maintenance Removal Agreement [EMRA] for all private landscaping, enhanced pavement, or other private improvements located within the drainage easement.

ENGINEERING

11. The Applicant/Subdivider shall replace the existing curb, gutter, and sidewalk along the subdivisions public street frontages, maintaining the existing sidewalk scoring pattern and preserving all contractor's stamps, satisfactory to the City Engineer.
12. The Applicant/Subdivider shall obtain an EMRA, for proposed private or public improvements located in the public right-of-way including: the double box culvert storm drain located in the Commercial Street public right-of-way and the enhance paving located in the 22nd Street, Beardsley Street, and the proposed alley extension public right-of-way and for other proposed surface improvements located in the public right-of-way. The following language shall also be included in the Encroachment Maintenance and Removal Agreement:

At the owner's request, portions of the sewer main are being relocated to non-standard locations with surface improvements other than asphalt. In return, the owner agrees to replace any and all surface improvements (including landscaping and irrigation systems but excluding standard asphalt pavement) at the owner's sole cost and

expense, whenever the City of San Diego repairs or replaces all or a portion of the sewer mains fronting the property and located less than ten feet from or behind the curb. Such improvements will be installed by the owner to the City standards in effect at the time the work is performed.

13. The Applicant/Subdivider shall dedicate and improve an additional 5 feet of adjacent right-of-way along the projects Commercial Street and Beardsley Street frontages.
14. The Applicant/Subdivider shall dedicate and improve a City standard alley to extend the existing alley from Cesar Chavez Parkway to an intersection with Irving Avenue.
15. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the Applicant/Subdivider to provide the right-of-way free and clear of all encumbrances and prior easements. The Applicant/Subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
16. The Applicant/Subdivider shall reconstruct the existing curb ramp(s) adjacent to the project to meet current City standards.
17. The onsite drainage system proposed for this subdivision, as shown on the approved Vesting Tentative Map, is private and subject to approval by the City Engineer.
18. The Applicant/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.
19. The Applicant/Subdivider shall underground existing and/or proposed public utility systems and service facilities in accordance with the San Diego Municipal Code.
20. 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 prior to and concurrently with the commencement of grading activities, and a Notice of Intent [NOI] shall be filed with the SWRCB.

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 and prior to commencement of any work; 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.

21. Prior to the issuance of any construction permit, the Applicant/Subdivider shall comply with and incorporate any construction Best Management Practices [BMP] necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.
22. The Applicant/Subdivider shall enter into a Maintenance Agreement with the City of San Diego for the ongoing permanent BMP maintenance.
23. Prior to the issuance of any construction permit, the Applicant/Subdivider shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report.
24. The Applicant/Subdivider shall obtain from the City of San Diego an encroachment maintenance and removal agreement for all nonstandard driveways shown on the approved Exhibit "A."
25. The Applicant/Subdivider shall underground any new service run to any new or proposed structures within the subdivision prior to final completion of project.
26. The Applicant/Subdivider shall ensure that all on-site utilities serving the subdivision shall be undergrounded with appropriate permits prior to final completion of project. The Applicant/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 prior to final completion of project and before any units or sold or leased.
27. The Applicant/Applicant/Subdivider shall comply with and conform the project to 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 vesting tentative map and covered in these special conditions shall be authorized by the City.

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

28. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source shall be the California Coordinate System, Zone 6, North American Datum of 1983 [NAD 83].
29. "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."

30. 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

31. Prior to the recordation of the right-of-way vacation, the Applicant/Subdivider shall provide proof of the Water Department's operational acceptance of the abandonment of the portion of water mains located within the vacated Irving Avenue right-of-way, in a manner satisfactory to the Water Department Director and the City Engineer.
32. The Applicant/Applicant/Subdivider shall prepare a City approved and accepted water study, and shall design and construct all public water facilities, as required in the accepted water study, necessary to serve this development. Water facilities, as shown on the approved tentative map, will require modification based on the accepted water study and to maintain redundancy throughout construction phasing, if any, at final engineering.
33. Prior to recording the Final Map, the Applicant/Subdivider, after obtaining City approval of work plans, shall cut, plug, and abandon the existing public water facilities, located within the proposed Irving Avenue right-of-way to be vacated traversing the project site, in a manner satisfactory to the Water Department Director and the City Engineer.
34. The Applicant/Subdivider, with prior written approval from the City's Fire Chief, shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two fire hydrants or thirty dwelling units are located on a dead-end main then the Applicant/Subdivider shall install a redundant water system satisfactory to the Water Department Director and Fire Department.
35. The Applicant/Subdivider shall process an EMRA for all acceptable encroachments, including but not limited to, structures, enhanced paving, or landscaping, into any public right-of-way containing public water facilities. No

structures or landscaping of any kind shall be installed in or over any vehicular access roadway.

36. The Applicant/Subdivider shall provide CC&Rs for the operation and maintenance of any on-site private water facilities that serve or traverse more than a single dwelling unit or common area.
37. The Applicant/Subdivider agrees to design and construct all proposed public water facilities, including but not limited to services, meters and easements, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City and state rules and regulations, standards and practices pertaining thereto. Water facilities shall be modified at final engineering to comply with standards.

WASTEWATER

38. The Applicant/Subdivider shall relocate and install onsite public sewer mains, satisfactory to the Metropolitan Wastewater Department Director. All associated public easements shall be vacated, satisfactory to the Metropolitan Wastewater Department Director and in accordance with the San Diego Municipal Code.
39. The Applicant/Subdivider shall perform a City approved and accepted sewer study, and shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved tentative map shall require modification based on the accepted sewer study.
40. The Applicant/Subdivider shall grant and record adequate sewer, and/or access easements, including vehicular access to each manhole, for all public sewer facilities that are not located within the public right of way, satisfactory to the Metropolitan Wastewater Department Director. The easements shall be located within single lots. Vehicular access roadbeds shall be surfaced with suitable approved material satisfactory to the Metropolitan Wastewater Department Director.
41. No structures or landscaping that would inhibit vehicular or City access shall be installed in or over any sewer access easement.
42. No improvements or landscaping, including private sewer facilities, grading and enhanced paving, shall be installed in or over any public easement prior to the applicant obtaining a City approved Encroachment Maintenance and Removal Agreement.
43. All onsite sewer facilities that serve only this development shall be private.
44. The Applicant/Subdivider shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of on site private sewer mains that serve more than one ownership.
45. The Applicant/Subdivider shall design and construct all proposed public sewer facilities in accordance with the most current edition of the City of San Diego's Sewer Design Guide and applicable local and state law.

GEOLOGY

46. 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."

INFORMATION:

- The approval of this Vesting Tentative Map by the Council of the City of San Diego does not authorize the Applicant/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 Applicant/Subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the Applicant/Subdivider shall first obtain City approval and 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 and state 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 Vesting 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 Vesting Tentative Map, may protest the imposition within ninety days of the approval of this Vesting 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 Applicant/Applicant/Subdivider shall at no cost to the City obtain the required permits for work in the public right-of-way, and shall repair or replace the public facilities to the satisfaction of the City Engineer. San Diego Municipal Code section 142.0607.