

(R-2008-263) 337
MEET 1/15

RESOLUTION NUMBER R- 303338

DATE OF FINAL PASSAGE JAN 15 2008

WHEREAS, EQR Deerwood Vista, Inc., Applicant/Subdivider, and Project Design Consultants, Engineer, submitted an application to the City of San Diego for a tentative map (Tentative Map No. 352695), easement abandonment (Easement Abandonment No. 366059), and public right-of-way vacation (Public Right-of-Way Vacation No. 366060), for the conversion of 316 residential units into condominiums, for the 15640 Bernardo Tentative Map [Project], located 15640 Bernardo Center Drive, in the Rancho Bernardo Community Plan area, in the RM-1-1 zone; and

WHEREAS, the Map proposes the subdivision of a 27.05 acre site into one lot; and

WHEREAS, on July 19, 2007, the Planning Commission of the City of San Diego considered Tentative Map No. 352695, Public Right-of-Way No. 366060, and Easement Vacation No. 366059, and pursuant to Resolution No. 4287-1-PC voted to recommend City Council approval of the Tentative Map, Public Right-of-Way Vacation and Easement Abandonment; and

WHEREAS, the Project is exempt from environmental review pursuant to Article 19, Section 15301(k) of the California Environmental Quality Act [CEQA] on the basis that the facilities are existing; and

WHEREAS, a preliminary soils and/or geological reconnaissance report are waived by the City Engineer pursuant to the Subdivision Map Act and San Diego Municipal Code section 144.0220; 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 units is 316; 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 **JAN 15 2008**, 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 Tentative Map No. 352695, Public Right-of-Way Vacation No. 366060, and Easement Vacation No. 366059:

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 [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 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 or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidable injure fish or wildlife or their habitat (LDC section 125.0440(d) and Subdivision 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 (LDC section 125.0440(e) and Subdivision 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 (LDC section 125.044) 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 (LDC section 125.0440(g) and Subdivision 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 (LDC section 125.0440(h) and Subdivision Map Act Section 66412.3).
9. Each of the tenants of the proposed condominium project has received, pursuant to Subdivision Map Act Section 66452.9, written notification of intention to convert at least sixty days prior to the filing of a tentative map (LDC section 125.0444 and Subdivision Map Act Section 66427.1(a)).
10. The project has been conditioned that the Subdivider will give each tenant, and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the Subdivision Map Act (LDC section 125.0444 and Subdivision Map Act Section 66427.1(a)).
11. The project has been conditioned that the Subdivider will give each tenant ten days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request (LDC section 125.0444 and Subdivision Map Act Section 66427.1(a)).
12. The project has been conditioned that the Subdivider will give each tenant of the proposed condominium project written notification within ten days of approval of a final map for the proposed conversion (LDC section 125.0444 and Subdivision Map Act Section 66427.1(b)). If the subdivider chooses to provide affordable housing units, the subdivider shall enter into an affordable housing agreement with the Housing Commission, prior to recordation of the Final Map.
13. The project has been conditioned that the Subdivider will give each of the tenants of the proposed condominium project 180 days' written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion (LDC section 125.0444 and Subdivision Map Act Section 66427.1(c)).
14. The project has been conditioned that the Subdivider will give each of the tenants of the proposed condominium project notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, which notice shall be provided within five working days of the issuance of the Subdivision Public Report.. The right shall run for a period of not less than ninety days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right (LDC section 125.0444 and Subdivision Map Act Section 66427.1(d)).
15. The project was not financed by funds obtained from a governmental agency to provide for elderly, disabled, or low income housing (LDC section 125.0444.(b)).

16. For any project that was developed to provide housing for the elderly, disabled or to provide low income housing, provisions have been made to perpetuate the use for which the project was developed (LDC section 125.0444(c)).

17. Each of the tenants of the proposed condominium project has received written notification of the project application for the condominium conversion at least ten days after the application was deemed complete (LDC section 125.0431(a)(3)).

18. The project has been conditioned that the subdivider will give each person applying for the rental of a unit in such residential real property written notification that the project application for the condominium conversion was deemed complete (LDC 25.0431(a)(3)).

19. The project has been conditioned that the subdivider will give each tenant a notice of termination of tenancy 60 days prior to being required to vacate the property. (LDC section 125.0431(a)(4)).

20. A Building Conditions Report has been prepared in accordance with the Land Development Manual by a registered architect or engineer licensed by the State of California (LDC section 144.0504(b)).

21. The project has been conditioned that the subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (LDC section 144.0504(c)).

22. The project has been conditioned that the subdivider will provide a relocation assistance payment to all tenants of the project whose tenancy has terminated due to the condominium conversion. (LDC section 144.0505).

23. The project has been conditioned for the subdivider to complete the physical improvements as outlined in LDC section 144.0507, to the satisfaction of the City Engineer prior to final map approval.

24. The project has been conditioned for the subdivider to satisfy the inclusionary housing requirements on-site in accordance with LDC section 142.1306. (LDC section 44.0508).

25. The proposed subdivision complies with the parking regulations of the Land Development Code (LDC section 142.0505).

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

BE IT FURTHER RESOLVED, that pursuant to SDMC section 125.0941, the Council approves the following findings for the Public Right-of-Way Vacation:

1. There is no present or prospective 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 in that the area of public right-of-way proposed to be vacated is a remnant future street easement that was not utilized with the improvement of Camino del Norte. The City of

San Diego has determined that the future street easement will not be required and that due to the configuration of the easement would not serve any other public purpose.

2. The public will benefit from the action through improved use of the land made available by the vacation because the remnant parcel of the right-of-way serves no useful public purpose and the vacation would relinquish any and all liability of the City of San Diego associated with the existing easement.

3. The vacation does not adversely affect any applicable land use plan because the existing public improvements on Camino Del Norte are consistent with the Transportation Element of the Rancho Bernardo Community Plan and the City of San Diego Street Design Manual.

4. The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation because the easement was for future street improvements for Camino Del Norte which has been fully improved and the easement to be vacated is a remnant of the original right-of-way.

BE IT FURTHER RESOLVED, that pursuant to SDMC section 125.1040, the Council approves the following findings for the Easement Abandonment:

1. There is no present or prospective use for the easement, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated because the easements were never utilized. Alternative utility easements were established within the project site when the development was constructed and the easements proposed for vacation were not removed at the time. Existing buildings encroach over the old easements which would encumber the sale of the units in those structures.

2. The public will benefit from the action through improved use of the land made available by the easement because the property would be unencumbered by this action. The easements were never used for the intended purpose and replaced by alternative easements so no loss of service or access to the utilities would result in this abandonment.

3. The abandonment is consistent with the applicable land use plan in that the abandonment will provide additional housing opportunities in the Rancho Bernardo Community.

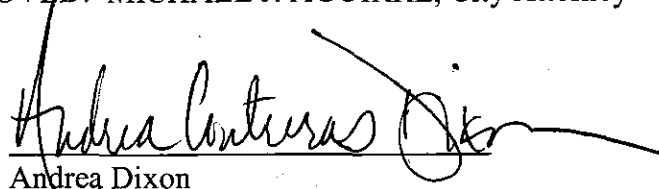
4. The public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the abandonment or the purpose for which the easement was acquired no longer exists because the easement was never utilized. Alternative utility easements were established within the project site when the development was constructed so there would be no loss of service or access to existing easements that are to remain as a result of this action.

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BE IT FURTHER RESOLVED, that Tentative Map No. 352695, Easement Abandonment No. 366059 and the Public Right-of-Way Vacation No. 366060 is granted to EQR Deerwood Vista, Inc., Applicant/Subdivider and Project Design Consultants, Engineer, subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Andrea Dixon
Deputy City Attorney

AD:ca
10/02/07
Or. Dept.: DSD
R-2008-263
MMS#5353

CONDITIONS FOR TENTATIVE MAP NO. 352695,
EASEMENT ABANDONMENT NO. 366059
RIGHT-OF-WAY VACATION NO. 366060

1564 BERNARDO TENTATIVE MAP PROJECT

ADOPTED BY RESOLUTION NO. R- 303338 ON JAN 15 2008

GENERAL

1. This Tentative Map will expire on JAN 15, 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 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 Tentative Map No. 352695; Public Right-of-Way Vacation No. 366060 and Easement Vacation No. 366059.
5. 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.
6. The subdivider shall provide a Notice of Tenants Rights and Notices for Condominium Conversion, consistent with the Land Development Manual to be provided as follows:

- a. For existing tenants, within ten days of the project application for the *condominium conversion* being deemed complete; or
 - b. For prospective tenants, upon application for the rental of a unit in the proposed *condominium conversion*.
7. The property contains a *right-of-way* and easement which must be vacated to implement the Final Map in accordance with [SDMC] section 125.0430.
 8. The Subdivider shall provide each tenant, and each person applying for the rental of a unit in such residential real property, all applicable notices and rights now or hereafter required by the State Map Act.
 9. The Subdivider shall provide the tenants a Notice of Application for a Public Report at least ten days prior to the submittal to the Department of Real Estate [DRB], pursuant to Section 66427.1(a) of the Subdivision Map Act.
 10. The Subdivider shall provide each of the tenants of the proposed condominiums written notice of intention to convert at least 180 days prior to termination of tenancy due to the conversion or proposed conversion in conformance with Section 66427.1(c) of the Subdivision Map Act. The provisions of this subdivision shall not alter nor abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provision of services, payment of rent, or the obligations imposed by Sections 1941, 1941.1 and 1941.2 of the Civil Code.
 11. The Subdivider shall provide each of the tenants of the proposed condominiums notification of their exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant, in conformance with Section 66427.1(d) of the State Map Act. The right shall run for a period of not less than ninety days from the date of issuance of the subdivision public report, pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.
 12. The Subdivider shall provide the tenants of the proposed condominiums with written notification within ten days or approval of a Final Map for the proposed conversion, in conformance with Section 66427.1(b) of the Subdivision Map Act.

AFFORDABLE HOUSING

- 13. Prior to the recordation of the Final Map, the 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 LDC).
- 14. Prior to the recordation of the Final Map, the subdivider shall demonstrate conformance with the Municipal Code provisions for Tenant Relocation Benefits (Chapter 14, Article 4, Division 5), to the satisfaction of the City Manager and the Housing Commission.

ENGINEERING

- 15. The subdivider shall reconstruct the emergency access driveway to install a controlled access device, remove the existing driveway apron and replace with sidewalk and a modified rolled curb, adjacent to the site on Camino Del Norte.
- 16. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
- 17. The subdivider shall replace the cracked and/or uplifted portions of sidewalk, adjacent to the site on Bernardo Center Drive and Camino Del Norte.
- 18. The subdivider shall reconstruct the two existing curb ramps to current City Standards at the northeast and northwest corners of the easterly private drive and the Bernardo Center Drive intersection.
- 19. The subdivider shall reconstruct the two existing westerly modified commercial driveways to current City Standards, maintaining the existing driveway width and providing sidewalk across the driveway span, adjacent to the site on Bernardo Center Drive.
- 20. The subdivider shall repair the broken irrigation pipe, located west of the westerly driveway entrance, adjacent to the site on Bernardo Center Drive.

21. The subdivider shall remove the two existing curb ramps and replace with full height curb, gutter, and sidewalk at the Bernardo Center Drive and Camino Crisalida intersection, adjacent to the site.
22. Pursuant to City Council Policy 600-20, the subdivider shall provide evidence to ensure that an affirmative marketing program is established.
23. 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 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), upgrading light from low pressure to high pressure sodium vapor and/or upgrading wattage.
24. Prior to the recordation of the Final Map, the subdivider shall demonstrate conformance with the Municipal Code provisions for building and landscape improvements (LDC Sections 144.0507), to the satisfaction of the City Engineer. The parking requirements in LDC Sections 144.0507 and 142.0525.a do not apply, since this project was deemed complete prior to the effective date of this ordinance (July 27, 2006).
25. 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

26. Pursuant to California Government Code section 66434 (g), the following right-of-ways and public service easements, located within the project boundaries as shown in Vesting Tentative Map No. 352695, shall be vacated, contingent upon the recordation of the approved Map for the project:
 - a. All of that portion of Lot 1 in Map 11830 reserved for Future Street.
 - b. All of the Building Restricted Easement granted in Lots 1 and 2 in Map 11830.

- c. A portion of the 42 feet wide General Utility Easement granted in Lots 1 and 2 in Map 11830.
27. "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].
28. "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."
29. 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

30. The subdivider shall install appropriate private back flow prevention devices on all existing and proposed water services (domestic, irrigation, and fire) adjacent to the project site in a manner satisfactory to the Water Department Director.
31. The subdivider shall provide a letter, agreeing to prepare CC&Rs for the operation and maintenance of all private water and sewer facilities that serve or traverse more than a single condominium unit or lot.
32. The developer shall design and construct any proposed public sewer facilities 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.

33. 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.
34. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.
35. The developer shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot will have its own sewer lateral or provide CC&R's for the operation and maintenance of on-site private sewer facilities that serve more than one lot.
36. If the Subdivider makes any request for new water facilities (including services or fire hydrants), then the Subdivider shall design and construct such 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.
37. The Subdivider shall install two new gate valves on the on-site water system and one new fire hydrant adjacent to the project's existing driveway on Camino del Norte.
38. 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 unit or lot.
39. 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 may require modification to comply with standards.
40. It is the sole responsibility of the Owner/Permittee for any damage caused to or by public water facilities, adjacent to the project site, due to the construction activities associated with this development. In the event any such facility loses integrity then, prior to the issuance of any certificates of occupancy, the Owner/Permittee shall reconstruct any damaged public water facility in a manner satisfactory to the Water Department Director and the City Engineer.

LANDSCAPE

41. Prior to recordation of the Final Map, complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the Development Services Department for approval. The construction documents shall be in substantial conformance with the Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department.
42. Prior to recordation of the Final Map, and after Landscape and Irrigation Construction Documents have been approved by Development Services, the subdivider shall install all required landscaping consistent with the approved plans and the Land Development Manual, Landscape Standards.
43. Prior to recordation of the Final Map, it shall be the responsibility of the Permittee/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.
44. The Landscape Construction Plan shall take into account a 40 sq-ft area around each tree which is unencumbered by hardscape and utilities as set forth under LDC section 142.0403(b)5.
45. 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. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.
46. The Permittee or subsequent owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Land Development Manual 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.
47. 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 thirty days of damage or prior to a Certificate of Occupancy or a Final Landscape Inspection.

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 ninety 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. SDMC Section 142.0607.