

(R-2008-744)

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RESOLUTION NUMBER R-303466

DATE OF FINAL PASSAGE MARCH 4, 2008

WHEREAS, William G. Clarke Family Trust, Applicant/Subdivider, and San Diego Land Surveying and Engineering, Inc., Engineer, submitted an application to the City of San Diego for a tentative map (Tentative Map No. 254536) for the conversion of an existing 2-story, nine residential dwelling unit apartment complex into condominiums for the 1244 Oliver Tentative Map Project [Project], located at 1244 Oliver Avenue, on the north side of Oliver Avenue and east of Everts Street, and legally described as Lots 29 and 30, Block 289, Pacific Beach Subdivision of AC Lots 67, 68, 76, 77, 80 and 81, Map TR No. 946, in the Pacific Beach Community Plan area, in the RM-1-1 zone, Coastal Overlay Zone (non-appealable), and Coastal Height Limit Overlay Zone; and

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

WHEREAS, the Map proposes the subdivision of a 0.143-acre site into one lot for a 9-unit residential condominium conversion; and

WHEREAS, a hearing before the Planning Commission of the City of San Diego was scheduled for August 30, 2007 and continued to September 27, 2007, where the Planning Commission considered Tentative Map No. 254536 and Coastal Development Permit No. 457937, and pursuant to Resolution No. 4316-2-PC voted to approve the Tentative Map; and

WHEREAS, Robert J. Bateman, San Diego Land Surveying and Engineering, Inc. appealed the Planning Commission decision, as pertains to the condition requiring that the

physical improvements recommended in the Building Conditions Report be completed prior to the Final Map, to the Council of the City of San Diego; 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 geological reconnaissance report are waived 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 nine residential dwelling units; 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 March 4, 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. 254536:

1. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code [LDC] (LDC section 125.0440(b)).

2. 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).
3. 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)).
4. 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)).
5. 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)).
6. 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.
7. 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)).
8. 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. 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)).
9. 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)).
10. 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)).

11. 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)).

12. 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 section 125.0431(a)(3)).

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

14. 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).

15. The project has been conditioned for the subdivider to satisfy the inclusionary housing requirements in accordance with Land Development Code section 142.1306. (LDC section 144.0508).

16. The requested underground waiver of the existing overhead facilities, qualifies under the guidelines of Council Policy No. 600-25 Underground Conversion of Utility Lines at Developers Expense in that:

- a. The conversion involves a short span of overhead facility (less than 600 feet in length).
- b. The conversion is a requirement of a condominium conversion of an existing development and the conversion would not represent a logical extension to an underground facility.

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

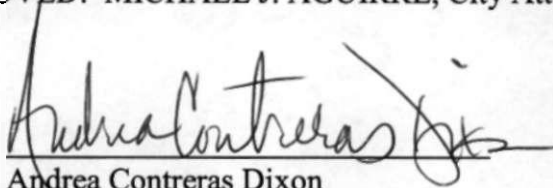
BE IT FURTHER RESOLVED, that the appeal of Robert J. Bateman is denied, the decision of the Planning Commission is sustained, and Tentative Map No. 254536 is granted to

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the William G. Clarke Family Trust, Applicant/Subdivider, and San Diego Land Surveying and Engineering, Inc., Engineer, subject to the conditions attached hereto and made a part hereof.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Andrea Contreras Dixon  
Deputy City Attorney

ACD:pev

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Or.Dept:Clerks

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CONDITIONS FOR TENTATIVE MAP NO. 254536

1244 OLIVER STREET TENTATIVE MAP PROJECT

ADOPTED BY RESOLUTION NO. R-303466 ON MARCH 4, 2008

**GENERAL**

1. This Tentative Map will expire March 4, 2011.
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 Coastal Development Permit No. 457937.
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 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 Subdivision Map Act.
  8. 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 [DRE], pursuant to Section 66427.1(a) of the Subdivision Map Act.
  9. 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.
  10. 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 Subdivision 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.
  11. 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.
  12. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
  13. Prior to recordation of the Final Map, all onsite 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.
  14. 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 Subdivision Map Act.

15. The Subdivider shall provide the tenants a Notice of Application for a Public Report at least ten days prior to the submittal to the DRB, pursuant to Section 66427.1(a) of the Subdivision Map Act.
16. 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.
17. 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 Subdivision 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.
18. 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.
19. The subdivider will provide to a prospective purchaser a copy of the Building Conditions Report prior to the opening of an escrow account. (Land Development Code Section 144.0504(c)).

#### **AFFORDABLE HOUSING**

20. The Housing Commission carried out a tenant income survey pursuant to the City's Coastal Overlay Zone Affordable Housing Replacement Regulations (Municipal Code Sections 143.0810 through 143.0860). The applicant is required to pay an in-lieu fee of \$145,100.00 to the Housing Commission or provide four replacement studio units for low-income households and one replacement studio unit for moderate-income households.  
  
The applicant shall enter into a Coastal Affordable Housing Compliance Agreement with the Housing Commission prior to the approval of Final Map.
21. 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**

22. The Final Map shall comply with the provisions of Coastal Development Permit No. 457937.
23. The subdivider shall remove the parking stripes from the Oliver Street right-of way.
24. The subdivider shall repair the damaged areas of the on site parking area off of Oliver Avenue.
25. The subdivider shall repair the damaged areas of the adjacent alley.
26. 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.
27. The subdivider shall re-stripe the rear and front parking spaces as shown on the TM.
28. Prior to the recordation of the Final Map, the subdivider shall demonstrate conformance with the Municipal Code provisions for building and landscape improvements (Land Development Code sections 144.0507), to the satisfaction of the City Engineer. The subdivider also agreed to an additional "Construction Budget" of additional improvements to the property, which would augment the submitted Property Conditions Report, these additional improvements are listed in the submitted "JG Clarke Construction" Construction Budget letter dated August 22, 2007, and is part of Exhibit A. At the hearing the subdivider also agreed to interior sound wall improvements, fire wall improvements, an up-grade of electrical system of the building to current code and the addition of a shut-off valve. The parking requirements in Land Development Code 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).

## **MAPPING**

29. "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].
30. "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."

31. Every 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.

32. The design of the subdivision shall include private easements, if any, serving parcels of land outside the subdivision boundary or such easements must be removed from the title of the subdivided lands prior to filing any parcel or final map encumbered by these easements.

#### **SEWER AND WATER**

33. Water and Sewer Requirements:

- a. 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.
- b. 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.

#### **INFORMATION:**

- The approval of this Tentative Map by the Planning Commission 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.