

RESOLUTION NUMBER R-304228

DATE OF FINAL PASSAGE OCTOBER 13, 2008

COSTA VERDE SOUTH TENTATIVE MAP NO. 216966,
PROJECT NO. 71257 – APPEAL OF PAUL ROBINSON ON
BEHALF OF THE PROJECT OWNER, COSTA VERDE
DEVELOPERS, LLC. AND CORY BRIGGS ON BEHALF OF
THE CITIZENS FOR RESPONSIBLE EQUITABLE
ENVIRONMENTAL DEVELOPMENT AND AFFORDABLE
HOUSING COALITION OF SAN DIEGO COUNTY.

WHEREAS, Costa Verde Developers, LLC, Applicant/Subdivider, Hunsaker & Associates, Inc., Engineer, submitted an application to the City of San Diego for a tentative map (Tentative Map, No. 216966) to allow the conversion of 606 existing residential units to condominiums. The project site is located at 8510-8550 Costa Verde Boulevard, which is bounded by Nobel Drive to the south, Regents Road to the west, Costa Verde Boulevard to the east and Plaza de Palmas to the north, legally described as Lots 3, 4 and 5 of Costa Verde, according to Map thereof No. 12045, in the RS-1-14 zone and within the University Community Plan area; and

WHEREAS, the Map proposes the subdivision of a 8.6-acre site into one lot for a 606-unit residential condominium subdivision; and

WHEREAS, the project is exempt from environmental review pursuant to Section 15301 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 by the City Engineer 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 606; and

WHEREAS, on June 5, 2008, the Planning Commission of the City of San Diego considered Tentative Map No. 216966, and voted 6-0 to approve the project, by Resolution No. 4406-PC; and

WHEREAS, Paul Robinson, on behalf of the property owner, Costa Verde Developers, LLC, appealed the Planning Commission decision to the Council of the City of San Diego. The applicant asserted that the project should be allowed to pay an affordable housing in-lieu fee as opposed to being required to provide onsite affordable housing, as conditioned by the Planning Commission; and

WHEREAS, Cory Briggs, on behalf of the Citizens for Responsible Equitable Environmental Development and the Affordable Housing Coalition of San Diego County, appealed the Planning Commission decision to the Council of the City of San Diego, asserting: the project is not exempt from CEQA; approval of the Tentative Map violates the San Diego Municipal Code and the State Subdivision Map Act by not proceeding in the manner prescribed by law, not making all necessary findings, and not supporting the findings with sufficient evidence; and the project is inconsistent with the Housing Element; 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 October 13, 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. 216966:

1. The proposed subdivision complies with the applicable zoning and development regulations of the San Diego Municipal Code and Land Development Code [SDMC/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 (SDMC/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 State Map Action Section 66452.9, written notification of intention to convert at least 60 days prior to the filing of a tentative map (SDMC/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 (SDMC/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 10 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 (SDMC/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 10 days of approval of a final map for the proposed conversion (SDMC/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 (SDMC/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, which notice shall be provided within 5 working days of the issuance of the Subdivision Public Report. The right shall run for a period of not less than 90 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 (SDMC/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 (SDMC/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 (SDMC/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 within 10 days after the application was deemed complete (SDMC/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 (SDMC/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 60 days prior to being required to vacate the property. (SDMC/LDC section 125.0431(a)(4)).

14. 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 (SDMC/LDC section 144.0504(b)).

15. 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. (SDMC/LDC section 144.0504(c)).

16. 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. (SDMC/LDC section 144.0505).

17. The project has been conditioned for the Subdivider to complete the physical improvements as outlined in Land Development Code section 144.0507, to the satisfaction of the City Engineer prior to final map approval.

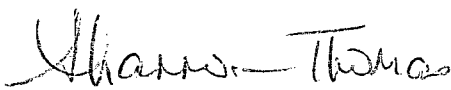
18. The project has been conditioned for the Subdivider to satisfy the inclusionary housing requirements on-site in accordance with Land Development Code section 142.1306. (SDMC/LDC section 144.0508).

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 Paul Robinson on behalf of Costa Verde Developers, LLC, in which the applicant asserted that the project should be allowed to pay an affordable housing in-lieu fee as opposed to being required to provide onsite affordable housing, as conditioned by the Planning Commission, is denied and the decision of the Planning Commission is sustained; however, the language on defense and indemnity provided in Mr. Robinson's letter on behalf of Costa Verde Developers, LLC, is made a part of the Tentative Map in lieu of the language that currently exists.

BE IT FURTHER RESOLVED, that the appeal of Cory Briggs, on behalf of the Citizen's for Responsible Equitable Environmental Development and the Affordable Housing Coalition of San Diego County, in which it was asserted that the project was not exempt from CEQA; approval of the Tentative Map violated the San Diego Municipal Code and the State Subdivision Map Act by not proceeding in the manner prescribed by law, not making all necessary findings, and not supporting the findings with sufficient evidence; and the project was inconsistent with the Housing Element, is denied and the decision of the Planning Commission is sustained.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Shannon Thomas
Deputy City Attorney

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10/24/08
02/17/09 COR.COPY
Or.Dept:DSD
R-2009-500
MMS #6402

CONDITIONS FOR TENTATIVE MAP NO. 216966

COSTA VERDE SOUTH – PROJECT NO. 71257

ADOPTED BY RESOLUTION NO. R-304228 ON OCTOBER 13, 2008

GENERAL

1. This Tentative Map will expire October 13, 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. Prior to the issuance of the 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
5. The Final Map shall conform to the provisions of Planned Residential Development Permit No. 91-0452.
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 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 in Government Code §66499.37. City shall promptly notify the subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If the City fails to promptly notify the subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, the 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. The subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the subdivider.
7. 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 10 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*.
- 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 10 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 90 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 10 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 (10 percent of the total) 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).
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 Development Services Department and the Housing Commission.
15. The Subdivider will give each tenant a notice of termination of tenancy 60 days prior to being required to vacate the property. (Land Development Code Section 125.0431(a)(4)).
16. 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)).

ENGINEERING

17. The Subdivider shall replace the cracked/uplifted portions of sidewalk, maintaining the existing sidewalk scoring pattern and preserving any contractor's stamp, adjacent to the site on Costa Verde Boulevard and Regents Road.
18. The Subdivider shall reconstruct 4 pedestrian ramps to current City Standards, adjacent to the site on Nobel Drive, Regents Road, Plaza De Palmas, and Costa Verde Boulevard.
19. The Subdivider shall obtain an Encroachment Maintenance and Removal Agreement, for the handrails and concrete walls in the Nobel Drive, Regents Road, and Plaza De Palmas rights-of-way.
20. The Subdivider shall enter into an agreement to indemnify, protect and hold harmless the City, its officials and employees from any and all claims, demands, causes or action, liability or loss because of, or arising out of the receipt of runoff from the concrete stairway access path in the Nobel Drive right-of-way.
21. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.
22. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.

23. 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 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).
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. RR-297376.

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.

SEWER AND WATER

28. 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.
29. 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.

LANDSCAPE

30. 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.
31. 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.
32. 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.
33. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or prior to recordation of the Final Map.

INFORMATION:

- The approval of this Tentative Map by the City Council of the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).

- If the Subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- Subsequent applications related to this Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Tentative Map, may protest the imposition within 90 days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.
- Where in the course of development of private property, public facilities are damaged or removed the property owner shall at no cost to the City obtain the required permits for work in the public right-of-way, and repair or replace the public facility to the satisfaction of the City Engineer. Municipal Code Section 142.0607.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF SAN DIEGO,
CALIFORNIA, ON OCTOBER 13, 2008.