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STRT J-2993(39) 11/18/08

RESOLUTION NUMBER R- 304439

DATE OF FINAL PASSAGE NOV 18 2008

A RESOLUTION APPROVING VESTING TENTATIVE
MAP NO. 524641 AND PUBLIC RIGHT-OF-WAY
VACATION NO. 524640 FOR THE PALLADIUM AT
AERO PROJECT NO. 148904.

WHEREAS, Westcore Sandrock, Applicant/Subdivider, and C. John Eardensohn, Engineer, submitted an application with the City of San Diego for a vesting tentative map, a waiver of the requirement to underground existing overhead utilities, and a public right-of-way vacation for a subdivision to create one lot for the development and construction of 412 residential dwelling units and four commercial units of approximately 5,190 square feet of retail commercial space for the Palladium at Aero Project [Project], located at 8655 Aero Drive within the RM-3-9 zone (formerly the IP-2-1 zone) of the Kearny Mesa Community Plan and legally described as Lots 3, 4, and 5 of Research Park Subdivision Addition, in the City of San Diego, County of San Diego, State of California, according to Map No. 6386, filed in the Office of the County Recorder of San Diego County, June 12, 1969; and

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

WHEREAS, this subdivision is a condominium project as defined in California Civil Code section 1351 and is filed pursuant to the Subdivision Map Act; the total number of multi-family residential units is 412 and the total number of commercial units is four; 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, on October 23, 2008, the Planning Commission of the City of San Diego considered Vesting Tentative Map [VTM] No. 524641, the waiver of the requirement to underground existing overhead utilities, and Public Right-of-Way Vacation No. 524640, and pursuant to Resolution No. 4460-PC voted to recommend City Council approval of the VTM, waiver, and vacation; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on November 18, 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 VTM No. 524641:

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 avoidably 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 125.0440(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. 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. The property contains a public right-of-way which must be vacated to implement the final map in accordance with San Diego Municipal Code section 125.0430.
10. 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 the conversion to underground would involve either a substantial investment in temporary facilities: cable; poles; temporary re-circuiting; etc.; or a significant amount of work considered off-site to the development which is financing the conversion.

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

BE IT FURTHER 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. 524640:

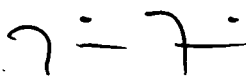
- (a) There is no present or prospective public use for the public right-of-way, either for the facility for which it was originally acquired or for any other public use of a like nature that can be anticipated.

- (b) The public will benefit from the action through improved use of the land made available by the vacation.
- (c) The vacation does not adversely affect any applicable land use plan.
- (d) The public facility for which the public right-of-way was originally acquired will not be detrimentally affected by the vacation.

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), portions of Aero Drive and Sandrock Road located within the Project boundaries as shown in VTM No. 524641 shall be vacated contingent upon the recordation of the approved final map for the project and that said findings for the vacation are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that Vesting Tentative Map No. 524641, including the waiver for the requirement to underground existing overhead utilities, and Public Right-of-Way Vacation No. 524640 are granted to Westcore Sandrock, LLC, Applicant/Subdivider, and C. John Eardensohn, Engineer, subject to the attached conditions which are made a part of this resolution by reference.

APPROVED AS TO FORM: MICHAEL J. AGUIRRE, City Attorney

By 

Nina M. Fain
Deputy City Attorney

NMF:mm
11/26/08
Or.Dept:DSD
R-2009-601
MMS#6971

CONDITIONS FOR VESTING TENTATIVE MAP NO. 524641

PUBLIC RIGHT-OF-WAY VACATION NO. 524640

PALLADIUM AT AERO PROJECT NO. 148904

ADOPTED BY RESOLUTION NO. R- 304439 ON NOV 18 2008

GENERAL

1. This Vesting Tentative Map will expire November 18, 2011.
2. 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.
3. 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
4. The final map shall conform to the provisions of Site Development Permit No. 524637.
5. The 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 and any environmental document or decision, which action is brought within the time period provided for in Government Code section 66499.37. City shall promptly notify subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, and defends the action in good faith. Subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the subdivider.

AFFORDABLE HOUSING

6. Prior to recording 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 Affordable Housing Regulations (Chapter 14, Article 2, Division 13 of the LDC).

ENGINEERING

7. Compliance with all conditions shall be assured, to the satisfaction of the City Engineer, prior to recording the final map.
8. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.
9. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
10. The final map shall comply with the provisions of Site Development Permit No. 524637.
11. 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

12. "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].
13. "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."
14. 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

15. The Subdivider shall grant adequate sewer and/or access easements, including vehicular access to each manhole, for all public sewer facilities that are not located within public rights-of-way, satisfactory to the Metropolitan Wastewater Department Director. Minimum easement width for sewer mains with manholes is 20 feet. The easements shall be located within single lots.
16. The Subdivider 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 will require modification based on the accepted sewer study.
17. The Subdivider shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego Sewer Design Guide. Proposed facilities that do not meet the current standards shall be private or re-designed.
18. Sewer lateral connections shall be made in accordance with Table 2-6 of the City of San Diego Sewer Design Guide.
19. The Subdivider shall comply with all the comments required by the accepted sewer study.

WATER

20. The Subdivider shall install fire hydrants, if required, at locations satisfactory to the Fire/Rescue Department, the Director of Public Utilities, and the City Engineer.
21. If the Subdivider makes any request for new water facilities (including services or fire hydrants), 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.
22. 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.

23. The Subdivider shall 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.
24. It is the sole responsibility of the Subdivider 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 Subdivider shall reconstruct any damaged public water facility in a manner satisfactory to the Director of Public Utilities and the City Engineer.

GEOLOGY

25. 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.

PLANNING

26. Prior to recording the final map, the Subdivider shall provide a valid "Determination of No Hazard to Air Navigation" issued by the Federal Aviation Administration [FAA].

TRANSPORTATION

27. Prior to recording the final map, the Subdivider shall dedicate 14 feet of project frontage along Aero Drive, satisfactory to the City Engineer.
28. Prior to recording the final map, the Subdivider shall dedicate zero to five (0-5) feet of project frontage along Sandrock Road, satisfactory to the City Engineer.
29. Prior to recording the final map, the Subdivider shall assure, by permit and bond, the construction of a signalized intersection on Aero Drive at the Project driveway with the following: a 160-foot westbound left-turn lane; two through westbound lanes; a left-turn eastbound lane; two through and one through right-turn eastbound lanes with one inbound and two outbound lanes for the south leg; a 4-foot raised median; and appropriate pedestrian ramps at all four corners of the intersection, all satisfactory to the City Engineer.
30. Prior to recording the final map, the Subdivider shall assure, by permit and bond, the construction of an additional eastbound travel lane along the Project frontage on Aero Drive, including: curbs, gutter and non-contiguous sidewalks; closure of all unused driveways; installation of a R3-7 (Right Lane Must Turn Right) east of

the 12-foot driveway; installation of driveways consistent with Regional Standards drawing SDG-114 with bollards at the fire lane adjacent to the west property line of the project; and construction of a 12-foot wide driveway at the exit only lane with a R3-1 sign facing towards the eastbound traffic and two R5-1 signs facing towards any southbound traffic, all satisfactory to the City Engineer.

31. Prior to recording of the final map, the Subdivider shall assure, by permit and bond, the removal of the existing eastbound free right turn lane and construction of an additional standard eastbound right-turn lane at the Aero Drive/Sandrock Road intersection, including curbs, gutters, sidewalks, signal modifications, and appropriate pedestrian ramps at all four corners of the intersection, all satisfactory to the City Engineer.
32. Prior to recording of the final map, the Subdivider shall assure, by permit and bond: (1) the improvement of the project frontage along Sandrock Road with curb, gutter, and sidewalks; (2) installation of one driveway consistent with Regional Standards drawing SDG-114 serving the fire lane; and (3) closure of all unused driveways, all satisfactory to the City Engineer.

INFORMATION

- The approval of this Vesting Tentative Map by the Council of the City of San Diego does not authorize the Subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
- 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 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 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 pursuant to Municipal Code section 142.0607.