

RESOLUTION NUMBER R-304592

DATE OF FINAL PASSAGE JANUARY 13, 2009

A RESOLUTION DENYING THE APPEAL OF CORY J. BRIGGS, BRIGGS LAW CORPORATION ON BEHALF OF THE AFFORDABLE HOUSING COALITION OF SAN DIEGO AND CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL DEVELOPMENT AND APPROVING TENTATIVE MAP NO. 348629 – PROMENADE @ RIO VISTA TENTATIVE MAP PROJECT, PROJECT NO. 105158.

WHEREAS, Promenade Acquisition, LLC, Applicant/Subdivider, and Rick Engineering Company, Engineer, submitted an application to the City of San Diego for a tentative map (Tentative Map No. 348629) for the conversion of 970 residential units to condominiums and creation of seventeen commercial condominium units on a 15.68-acre site to be known as the Promenade @ Rio Vista Tentative Map Project [Project], located at 8405-8715 Rio San Diego Drive, 8555 Station Village Lane, 2185-2195 Station Village Way and 2173 Camino Del Este, and legally described as Parcels 1 and 2 of Parcel Map No. 18407, in the Mission Valley Community Plan area and is part of the First San Diego River Improvement Project [FSDRIP] and Rio Vista West Specific Plans [Community Plan area], in the MV-M/SP zones of the Mission Valley Planned District; 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 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 dwelling units is 970 and the commercial units is seventeen; and

WHEREAS, on October 9, 2008, the Planning Commission of the City of San Diego considered Tentative Map No. 348629, and pursuant to Resolution No. 4462-PC voted to grant the map; and

WHEREAS, Cory J. Briggs, Briggs Law Corporation on Behalf of the Affordable Housing Coalition of San Diego and Citizens For Responsible Equitable Environmental Development appealed the Planning Commission decision to the Council of the City of San Diego; 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 January 13, 2009, 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. 348629:

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 125.0440(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. Each of the tenants of the proposed condominium project has received, pursuant to Subdivision Map Action Section 66452.11, written notification of intention to convert at least 180 days prior to the termination of tenancy.

10. Each of the tenants of the proposed condominium project has received a notice sixty days prior to the filing of a tentative map (LDC section 125.0444 and Subdivision Map Act Section 66452.9

11. 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)).

12. 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, that the period for each tenant's right to purchase begins with the issuance of the final public report, and that the report will be available on request (LDC section 125.0444 and Subdivision Map Act Section 66427.1 (a)(2)(B)).

13. The project has been conditioned that the Subdivider will give each tenant of the proposed condominium project written notification within ten days after approval of a final map

for the proposed conversion, and written notification within five days of receiving the public report from the Department of Real Estate (LDC section 125.0444 and Subdivision Map Act Section 66427.1(a)(2)). 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.

14. 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, but not before the approval of the tentative map for the conversion. (LDC section 125.0444 and Subdivision Map Act Section 66427.1(a)(2)(E)).

15. 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(a)(2)(F)).

16. 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)).

17. Each of the tenants of the proposed condominium project has received written notification of the project application for the condominium conversion within 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 section 125.0431(a)(3)).

19. 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)).

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, and the City has accepted the report as complete (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, as and when required by the Land Development Code, 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 Land Development Code 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 Land Development Code section 142.1306. (LDC section 144.0508).

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 the appeal of Cory J. Briggs, Briggs Law Corporation on Behalf of the Affordable Housing Coalition of San Diego and Citizens For Responsible Equitable Environmental Development, is denied, the decision of the Planning Commission is sustained, and Tentative Map No. 348629 is granted to Promenade Acquisition, LLC, Applicant/Subdivider, and Rick Engineering, Engineer, subject to the conditions attached hereto and made a part hereof.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Keith Bauerle  
Deputy City Attorney

KB:pev  
01/27/09  
Or.Dept:Clerk  
R-2009-790  
MMS #6903

CONDITIONS FOR TENTATIVE MAP NO. 348629

PROMENADE @ RIO VISTA TM PROJECT, PROJECT NO. 105158

ADOPTED BY RESOLUTION NO. R-304592 ON JANUARY 13, 2009

**GENERAL**

1. This Tentative Map will expire January 13, 2012.
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 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 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 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 such settlement is approved by the Subdivider.
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) (2)(B) 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(a)(2)(E) 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(a)(2)(F) 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 of approval of a Final Map for the proposed conversion, in conformance with Section 66427.1(a)(2)(D) of the Subdivision Map Act.

#### **AFFORDABLE HOUSING**

12. Prior to the recordation of the Final Map, the subdivider shall enter into an affordable housing agreement with the Housing Commission to provide at least ninety-seven affordable housing units in compliance with the Affordable Housing Requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code).
13. 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.
14. The subdivider will give each tenant a notice of termination of tenancy sixty days prior to being required to vacate the property. (Land Development Code [LDC] section 125.0431(a)(4)).

15. 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)).

### **ENGINEERING**

16. Prior to recordation of the Final Map, The subdivider shall replace all existing curb ramps, adjacent to the project site, with City standard curb ramps with truncated domes.
17. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
18. 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.
19. 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.
20. 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**

21. "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].
22. "California Coordinate System means the coordinate system as defined in Sections 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."



23. 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.

### **LANDSCAPE**

24. Prior to recordation of the Final Map, complete 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.
25. All existing 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.
26. The Permittee or Subsequent Owner shall be responsible for the maintenance of all existing landscape in the right-of-way consistent with the Land Development Manual Landscape Standards.

If any existing landscape (including existing 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 Development Services Department 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.