

RESOLUTION NUMBER R- 304802

DATE OF FINAL PASSAGE APR 14 2009

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING MAP WAIVER NO. 612684, PUBLIC RIGHT-OF-WAY VACATION NO. 618775, EASEMENT ABANDONMENT NO. 618777, AND EASEMENT ACQUISITION NO. 618778 FOR THE BROWN FIELD TECH PARK, PROJECT NO. 100619.

WHEREAS, Brown Field Technology Park, LLC, Applicant/Subdivider, and Matthew Barlow, Engineer, submitted an application to the City of San Diego for a map waiver, public right-of-way vacation, easement abandonment and easement acquisition (Map Waiver No. 612684, Public Right-of-Way Vacation No. 618775, Easement Abandonment No. 618777, and Easement Acquisition No. 618778) for a subdivision to consolidate twenty-one parcels into twenty parcels and vacate, dedicate and acquire general easements to accommodate the State Route-905 alignment adjustment for the Brown Field Tech Park project [Project], located south of Otay Mesa Road, west of Britannia Blvd, and north of Airway Road, and legally described as lots 1 through 21 according to Map No. 13498, recorded in the City of San Diego, County of San Diego County on November 10, 1997; together with those portions of Otay Mesa Road, Britannia Boulevard, Airway Road, Continental Street, Camino Maquiladora and Colchester Court, in the Otay Mesa Community Plan area, within the Otay Mesa Development District Industrial [OMDD] Subdistrict; and

WHEREAS, the map proposes the subdivision of a 58.4-acre site into twenty lots for industrial development and the abandonment/acquisition of general easements; and

WHEREAS, the Project is exempt from environmental review pursuant to Section 15305 (minor alterations to land use limitations) of the California Environmental Quality Act [CEQA]

on the basis that the project is a consolidation and lot line adjustment due to the Interstate 905 expansion and no construction is proposed; 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, 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, 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 to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on APR 14 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 Map Waiver No. 612684, Public Right-of-Way Vacation No. 618775, Easement Abandonment No. 618777, and Easement Acquisition No. 618778:

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)). The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The project is located within the Otay Mesa Community Plan which designates the site for industrial development. The proposed subdivision complies with the policies, goals, and objectives of the applicable land use plan for future industrial development. Therefore the project does not increase impacts to public services or fiscal or environmental resources.

2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code (LDC section 125.0440(b)). The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The proposed subdivision and vacations would comply with the development regulations of the underlying OMDD Industrial Subdistrict and all of the applicable development regulations of the Land Development Code. No deviation or variance is requested with this application. No construction is approved or requested with this application.

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)). The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The project is located within the Otay Mesa Community Plan which designates the site for industrial development. The site has been reviewed by San Diego City staff for compliance to future development in accordance with this Map Waiver application and City Drawing Nos. 33874-D, 33875-D, 33876-D and 33877-D. Therefore, the project does not increase impacts to public services or fiscal or environmental resources and is physically suitable for the future industrial developments.

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)). The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. There are no environmentally sensitive lands on the site for the project was exempt from CEQA. Therefore the subdivision will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

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)). The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The project has been reviewed and determined to be in compliance with the San Diego Municipal Code and Subdivision Map Act. The Map Waiver includes various conditions and corresponding exhibits of approvals relevant to achieving compliance with the regulations of the San Diego Municipal Code. The subdivision will continue to abide to all Federal, State and Local codes administering the Map Waiver. Therefore the project will not be detrimental to the public health, safety, and welfare.

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). The project is a Map Waiver to consolidate twenty-on parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The site contains various utility and access easements which are being affected by the final alignment of Interstate 905. The freeway alignment will require the easements and roadways to be reestablished. In addition, existing lot lines need to be readjusted. Therefore, the relocation of easements and lot line adjustments as proposed with this Map Waiver, will not create an access conflict through the property.

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). The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. No construction is proposed with the Map Waiver application. The design of the proposed subdivision conforms to the OMDD Industrial Subdistrict, the Otay Mesa Community Plan, and the General Plan. The project would not impact future passive or natural heating and cooling opportunities.

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). The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. No new construction is proposed with the map waiver application. Future development will be restricted to industrial development in accordance with the Land Development Code.

9. The proposed subdivision of land complies with requirements of the Subdivision Map Act and the Land Development Code as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of the Subdivision Map Act or the Land Development Code enacted pursuant thereto (LDC section 125.0122 and Subdivision Map Act Section 66428(b)). The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The subdivision has been reviewed with all Federal, State and Local codes administering the Map Waiver; therefore, it will comply with requirements of the Subdivision Map Act and the Land Development Code as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of the Subdivision Map Act or the Land Development Code enacted pursuant thereto.

10. There is no present or prospective use for the easement for which the easement was originally acquired, or for any other public use of a like nature that can be

anticipated. The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The existing general easements are being abandoned and relocated as a result of the Interstate 905 expansion. Maintaining the easements in their current location will impact the Interstate 905 expansion and will not serve the use it was originally anticipated for. Therefore, there is no present or prospective use for the easement for which the easement was originally acquired, or for any other public use of a like nature that can be anticipated.

11. The public will benefit from the action through improved utilization of the land made available by the abandonment. The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The existing easements are being abandoned and relocated as a result of the Interstate 905 expansion. The abandonment and relocation of the easements will allow the improved utilization of land by providing adequate drainage to the subdivision and allowing for future industrial developments.

12. The abandonment will comply with the applicable land use plan. The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The property is designated for industrial parks within the Otay Mesa Community Plan. The abandonment and replacement of the general easements will facilitate future industrial development and allow future I-905 to traverse through the site as anticipated. Therefore the abandonment will comply with the applicable land use plan.

13. The public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the abandonment. The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The purpose for which the easements were acquired no longer exists. The expansion of Interstate 905 has required the originally approved easements be abandoned and relocated to serve the new design of the subdivision. The existing easements would not serve public facilities if left in their current location. Therefore the public facilities or purpose for which the easements were originally acquired will not be detrimentally affected by the abandonment.

14. There are no present or prospective uses for the public right-of-way, either for a public facility or the purposes for which they were originally acquired, or for any other public use of a like nature that can be anticipated. The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. Camino Maquiladora and Colchester Court are being vacated and realigned as a result of the Interstate 905 expansion. Maintaining the public rights-of-way in their current location will impact the Interstate 905 expansion and will not serve the use it was originally anticipated for. Therefore, there is no

present or prospective use for the public right-of-way for which it was originally acquired, or for any other public use of a like nature that can be anticipated.

15. The public will benefit from the vacation through improved utilization of land. The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. Camino Maquilador and Colchester Court are being vacated and realigned as a result of the Interstate 905 expansion. The vacations and relocation of the streets will allow the improved utilization of land by providing adequate access to the subdivision and allowing for future industrial developments.

16. The vacation does not adversely affect any applicable land use plan and is consistent with the General Plan and approved Community Plan. The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The property is designated for industrial parks within the Otay Mesa Community Plan. The redesigned roadways are being realigned to accommodate for future industrial developments and not impede future development of I-905. Therefore will not adversely affect the General Plan and approved Land Use Plan.

17. The public street system and the other public purposes for which the public rights-of-way were originally acquired will not be detrimentally affected by this vacation. The project is a Map Waiver to consolidate twenty-one parcels of land into twenty parcels, vacate a portion of Camino Maquiladora and Colchester Court public rights-of-way, and abandon various easements resulting from the final alignment of Interstate 905 on a 58.4-acre site. The purpose of which the easements were acquired for no longer exists. The expansion of Interstate 905 has required the originally approved public streets be vacated and realigned to serve the new design of the subdivision. The existing public rights-of-way would not serve public facilities if left in its current location. Therefore the public facilities or purpose for which the rights-of-way were originally acquired will not be detrimentally affected by the vacation.

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

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66445(j), portions of Camino Maquiladora, Colchester Court and the Irrevocable Offer to Dedicate Public Street over a portion of lots 7 and 10; the slope easement over a portion of lots 7 and 10; the drainage easement over lots 2, 3, 7, 10, 18, and 19; the sewer easement over lot 13 and the floodwater storage easement over lots 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 17, 18, 19,

20, and 21 all granted on Map No. 13498, located within the project boundaries as shown in Map Waiver No. 612684, shall be vacated, contingent upon the recordation of the approved Parcel Map for the project.

BE IT FURTHER RESOLVED, that Map Waiver No. 612684, Public Rights-of-Way Vacation No. 618775, Easement Abandonment No. 618777, and Easement Acquisition No. 618778 is granted to Brown Field Technology Park, LLC, Applicant/Subdivider and Matthew Barlow, Engineer, subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

Nina M. Fain
Deputy City Attorney

NMF:pev
03/24/09
Or.Dept:DSD
R-2009-985
MMS #8831

CONDITIONS FOR MAP WAIVER NO. 612684

BROWN FIELD TECH PARK PROJECT – PROJECT NO. 100619

ADOPTED BY RESOLUTION NO. R 304802 ON APR 14 2009

GENERAL

1. This Map Waiver will expire on ~~_____~~ **APR 14 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 Parcel Map unless otherwise noted.
3. Prior to the issuance of the Parcel 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 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.

ENGINEERING

5. All grading and public improvements as shown on City drawing 33874-D, 33875-D, 33876-D and 33877-D shall be accepted by the City Engineer.

MAPPING

6. "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].
7. "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."

8. The Parcel Map shall:
 - a. Use the California Coordinate System for its Basis of Bearings 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.

TRANSPORTATION

9. Subdivider shall dedicate and improve Otay Mesa Road to complete the 4th eastbound lane along the project frontage with curb, gutter, and sidewalk, satisfactory to the City Engineer.
10. Abutter's rights of access along Otay Mesa Road shall be revested for a 30 foot wide driveway between Lot 3 and Lot 5, satisfactory to the City Engineer.

INFORMATION:

- The approval of this Map Waiver 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 U.S.C. 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 Map Waiver 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 Map Waiver, may protest the imposition within ninety days of the approval of this Map Waiver 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.