

RESOLUTION NUMBER R- 305410  
DATE OF FINAL PASSAGE NOV 10 2009

A RESOLUTION GRANTING VESTING TENTATIVE MAP  
NO. 571214 AND RESCINDING VESTING TENTATIVE MAP  
178023 FOR THE ERMA ROAD PROJECT NO. 137944

WHEREAS, H.G. Fenton Development Company LLC, Applicant/Subdivider, and Stuart Engineering, Engineer, submitted an application to the City of San Diego for a vesting tentative map [VTM No. 571214], for the construction of a 95-unit residential condominium development, known as the Erma Road project. The 3.92-acre project site is located at 9889 Erma Road, west of Scripps Ranch Boulevard, within the RM-2-5 zone of the Scripps Miramar Ranch Community Plan Area, within the Airport Influence Area for the Marine Corps Air Station [MCAS] Miramar, Federal Aviation Administration [FAA] Part 77 Noticing Area for the MCAS Miramar, and Residential Tandem Parking Overlay Area. The property is legally described as Parcel 2 of Parcel Map 10259; and

WHEREAS, VTM No. 571214 proposes the subdivision of a 3.92-acre site into one lot for a 95-unit residential condominium development; and

WHEREAS, the project complies with the requirements of a preliminary soils and geological reconnaissance report pursuant to San Diego Municipal Code [SDMC] section 144.0220 and the California Government Code section 66410 *et seq.* [the Subdivision Map Act]; and

WHEREAS, the subdivision is a condominium project as defined in California Civil Code section 1351 and the Subdivision Map Act. The total number of condominium dwelling units is 95; and

WHEREAS, the Erma Road project, requires the rescission of Vesting Tentative Map No. 178023 and cancellation of Site Development Permit No. 153465; and

WHEREAS, on September 17, 2009, the Planning Commission of the City of San Diego considered VTM No. 571214, and pursuant to Resolution No. 4542-PC voted to recommend City Council approval of the map; 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 is required by law implicating due process rights of individuals affected by the decision, and the Council is required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, on NOV 10 2009, the City Council of the City of San Diego considered VTM No. 571214, and pursuant to SDMC section 125.0440 and Subdivision Map Act section 66428, received for its consideration written and oral presentations. Evidence and testimony having been submitted from all interested parties at the public hearing, and the City Council having fully considered the matter and being fully advised concerning the same; NOW THEREFORE,

BE IT RESOLVED by the City Council of the City of San Diego, that it adopts the following findings with respect to Vesting Tentative Map No. 571214:

- 1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan. SDMC § 125.0440(a); Subdivision Map Act §§ 66473.5, 66474(a)-(b).**

The proposed use of the property shown on Vesting Tentative Map No. 571214 is consistent with the Scripps Miramar Ranch Community Plan as proposed to be amended for this project from commercial to residential use. The amended Scripps Miramar Ranch Community Plan identifies this site for high-medium residential land use (15-29 dwelling units per acre). Based on this designation, the site could accommodate between 60-114 dwelling units. The Erma Road development project proposes to construct 95 dwelling units. With the adoption of the

amendment to the Scripps Miramar Ranch Community Plan, the proposed project will provide a multi-family development consistent with the policies and guidelines of the Scripps Miramar Ranch Community Plan. Further the design and implementation of the proposed project will achieve the goals, policies and objectives of the Scripps Miramar Ranch Community Plan.

**2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code. SDMC § 125.0440(b).**

The project proposes to construct 95 residential condominium units on a vacant 3.92-acre site. The project includes deviations from the RM-2-5 zone front and side yard setback requirements and retaining wall height limits due to site topography constraints. With the approval of deviations to building setback and retaining wall height, the proposed development meets all applicable zoning and development regulations in effect for this site per the Land Development Code (SDMC section 125.0440(b)).

**3. The site is physically suitable for the type and density of development. SDMC § 125.0440(c); Subdivision Map Act §§ 66474(c)-(d).**

With the adoption of the amendment to the Scripps Miramar Ranch Community Plan designating this site for high-medium residential land use (15-29 dwelling units per acre), the 3.92-acre property could accommodate 60 to 114 dwelling units. The proposed 95 residential units are within the designated density range. The conclusions of several technical and scientific reports (hydrology, water quality, noise, traffic, biology, waste management, and geotechnical) specifically concerned with determining the suitability of the site for the type and density of the proposed development concluded that the site is suitable for both the type and density of the proposed project.

**4. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. SDMC § 125.0440(d); Subdivision Map Act § 66474(e).**

A Mitigated Negative Declaration [MND] No. 137944 has been prepared for the project in accordance with the California Environmental Quality Act [CEQA], which addresses potential impacts to biological resources, public utilities (solid waste generation/disposal) and noise. A Mitigation, Monitoring, and Reporting Program [MMRP] will be implemented with this project to reduce the potential impacts to a level below significance.

**5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare. SDMC § 125.0440(e); Subdivision Map Act § 66474(f).**

The project proposes to construct 95 residential condominium units on a vacant 3.92-acre site. This Vesting Tentative Map No. 571214, the associated Planned Development Permit No. 571238, and exhibits for the project include conditions of approval relevant to achieving compliance with the applicable regulations of the SDMC in effect for design of this subdivision

and related improvements. Such conditions have been determined by the decision maker as necessary to avoid adverse impacts upon 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. SDMC § 125.0440(f); Subdivision Map Act § 66474(g).**

The subject property does not contain any easements by the public at large for access through or use of the property within the proposed subdivision.

**7. The design of the proposed subdivision provides, to the extent feasible, for future passive or natural heating and cooling opportunities. SDMC § 125.0440(g); Subdivision Map Act § 66473.1.**

The project proposes a deviation from the base RM-2-5 zone front and side yard setbacks and retaining wall heights due to site topography constraints. With approval of the deviations to building setbacks and retaining wall height, the proposed development meets all applicable regulations and policy documents, and the project is consistent with the land use, design guidelines, and development standards in effect for this site per the SDMC, the adopted Scripps Miramar Ranch Community Plan, and the General Plan.

The proposed development has been designed to not impact future passive or natural heating and cooling opportunities. The project proposes the use of solar energy to heat the pool and spa. High SEER (Seasonal Energy Efficiency Ratio) air conditioning will be used to lower energy costs (up to 40 percent), reduce hot spots and excess humidity, and yield longer equipment life expectancy. Dual-glazed, Low-E, vinyl windows will be used to reduce heat from the sun as well as heat loss in cooler months—thus increasing energy efficiency and lowering utility bills. Additionally, no aspect of the project's design would preclude adding solar panels or other energy-reducing features in the future. Furthermore, the project is a low-rise design. It is located west and south of existing residential developments. The project's design will not create shadows that could affect the use of passive or active energy devices on adjacent properties.

**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. SDMC § 125.0440(h); Subdivision Map Act § 66412.3.**

The subject Erma Road development project proposes to construct 95 residential condominium units on a vacant 3.92-acre site. With the adoption of the amendment to the Scripps Miramar Ranch Community Plan designating this site for high-medium residential land use (15-29 dwelling units per acre), the property could accommodate between 60-114 dwelling units. The proposed 95 residential units are within the designated density range. The Subdivider would comply with the City's affordable housing regulations by payment of the inclusionary housing in-lieu fee. The City Council has considered the effects of the proposed subdivision and resulting development on the housing needs of the region and finds that the proposed development will provide an increase in housing needed for the region. The Council further finds that the project

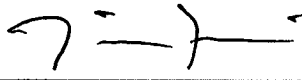
fulfillment of housing needs will not impact public services or available fiscal and environmental resources.

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

BE IT FURTHER RESOLVED, that based on the findings hereinbefore adopted by the City Council, Vesting Tentative Map No. 571214 is hereby granted to H.G. Fenton Company LLC, Applicant/Subdivider, subject to the attached conditions which are made a part of this resolution by this reference.

BE IT FURTHER RESOLVED, that in accordance with San Diego Municipal Code section 126.0110(b), Vesting Tentative Map No. 178023 is hereby rescinded.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
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Nina M. Fain  
Deputy City Attorney

NMF:js  
10/7/09  
Or.Dept:DSD  
R-2010-253  
MMS #10523

CITY COUNCIL  
CONDITIONS FOR VESTING TENTATIVE MAP NO. 571214

ERMA ROAD - PROJECT NO. 137944

ADOPTED BY RESOLUTION NO. R- 305410 ON NOV 10 2009

**GENERAL**

1. This Vesting Tentative Map [VTM No. 571214] will expire NOV 10 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 recordation 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 comply with the provisions of Planned Development Permit No. 571238.
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 or any associated environmental document or determination, 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.

**INCLUSIONARY HOUSING**

6. Prior to issuance of the first residential building permit, the Subdivider shall comply with the affordable housing requirements of the City's Inclusionary Housing Ordinance (Chapter 14, Article 2, Division 13 of the Land Development Code) by payment of the applicable inclusionary housing in-lieu fee.

## ENGINEERING

7. Pursuant to City Council Policy 600-20, the Subdivider shall provide evidence to ensure that an affirmative marketing program is established.
8. The Subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance.
9. Prior to the issuance of any construction permit, the Subdivider shall incorporate any construction Best Management Practices [BMP's] necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.
10. Prior to the issuance of any construction permit, the Subdivider shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report.
11. Prior to the issuance of a Final Map, taxes on this property shall be paid pursuant to section 66492 of the Subdivision Map Act, and a tax certificate verifying payment of all property taxes that has been recorded in the Office of the County Recorder shall be provided to the City Manager.
12. All driveways and curb openings shall comply with City Standard Drawings G-14A G-16 and SDG-100.
13. The drainage system proposed for this subdivision, as shown on VTM No. 571214, is private and subject to approval by the City Engineer.
14. The Subdivider shall execute an Encroachment, Maintenance, and Removal Agreement for 18-inch RCP private storm drain within the public right-of-way.
15. Prior to the issuance of grading permits, the Subdivider shall provide a geotechnical investigation report that addresses the proposed grading plans and cites the City's job order number and drawing number. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over-excavation depth, and limits of remedial grading.
16. A Final Map shall be recorded in the Office of the County Recorder prior to the expiration date of VTM No. 571214.

17. The Subdivider shall verify or assure compliance with all conditions of VTM No. 571214, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
18. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99-08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99-08 DWQ.
19. The Subdivider shall underground existing and proposed public utility systems and service facilities in accordance with the San Diego Municipal Code.
20. Prior to recordation of the Final Map, the Subdivider shall provide written confirmation from applicable utilities that all existing onsite utilities serving the subdivision have been undergrounded with the appropriate permits, or provide other means to assure the undergrounding, satisfactory to the City Engineer.

### 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 [NAD83].
22. "California Coordinate System of 1983" [CCS83] means the system of plane coordinates as defined and described in Section 8801 *et. seq.* of the California Public Resources Code. The specified zone for San Diego County is Zone 6, and the official datum is the NAD83.
23. The Final Map shall:



- a. Use the CCS83 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. The Basis of Bearings may be established 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 Horizontal Control stations shall be shown in relation to the CCS83 (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.

### **GEOLOGY**

27. Prior to the issuance of any construction permits, the Subdivider shall provide additional geotechnical information for the review and approval of the City Geologist, satisfactory to the City Geologist and Development Services Department. Based on the additional information, the City may impose additional or different geotechnical requirements.

### **WASTEWATER**

28. The Subdivider shall provide evidence, satisfactory to the Director of Public Utilities, that each condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of onsite private sewer mains that serve more than one ownership.
29. The Subdivider shall not install private utilities, conduct grading, or begin improvements over any public sewer easement until the Subdivider and the City execute an Encroachment, Maintenance, and Removal Agreement.
30. The Subdivider shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.
31. The Subdivider shall not install trees or shrubs that would exceed 3 feet in height at maturity within ten feet of any public sewer facilities.
32. All on-site sewer facilities shall be private.

### **WATER**

33. Prior to the issuance of any building permits, the Subdivider shall assure, by permit and bond, the design and construction of any new water service(s)

outside of any driveway, and the disconnection at the water main of the existing unused water service adjacent to the project site, in a manner satisfactory to the Director of Public Utilities and the City Engineer.

34. Prior to the issuance of any certificates of occupancy, the Subdivider shall apply for a plumbing permit and shall install appropriate private back flow prevention device(s), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Director of Public Utilities and the City Engineer.
35. Subdivider shall provide CC&Rs to the Development Project Manager ensuring the operation and maintenance of all private water facilities that serve or traverse more than a single unit or lot.
36. Prior to the issuance of any building permits, the Subdivider shall assure, by permit and bond the design and construction of reclaimed water irrigation service(s), in a manner satisfactory to the Director of Public Utilities and the City Engineer.
37. Prior to the issuance of any certificates of occupancy, all public water facilities shall be complete and operational in a manner satisfactory to the Director of Public Utilities and the City Engineer.
38. 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.

### **TRANSPORTATION**

39. No fewer than 235 automobile parking spaces (where 235 are required), including all disabled accessible spaces and a minimum of 5 motorcycle spaces, shall be permanently maintained on-site within the approximate location shown on the project's Exhibit "A."
40. All on-site parking spaces and aisle widths shall comply with the City's Land Development Code requirements, and shall not be converted or utilized for any other purpose, unless authorized by the appropriate City decision maker.
41. A minimum of one on-site loading area shall be permanently maintained on the site within the approximate location shown on the project's Exhibit "A." The required loading area shall comply with all Land Development Code requirements, and shall not be converted or utilized for any other purpose, unless authorized by the appropriate City decision maker.

## **ENVIRONMENTAL**

42. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into VTM No. 571214 by reference.
43. The mitigation measures specified in the MMRP and outlined in Mitigated Negative Declaration [MND] No. 137944, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.
44. The Subdivider shall comply with the MMRP as specified in MND No. 137944, satisfactory to the Development Services Department and the City Engineer. Prior to issuance of the first grading permit, the Subdivider shall adhere to all MMRP requirements, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following:
  - Biological Resources
  - Public Utilities (Solid Waste Generation/Disposal)
  - Noise
45. Prior to issuance of any construction permit, the Subdivider shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

## **INFORMATION:**

- The approval of this Vesting 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 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 ninety days of the approval of this Vesting 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.