

RESOLUTION NUMBER R- 314697

DATE OF FINAL PASSAGE APR 10 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING TENTATIVE MAP NO. 2600103
AND EASEMENT VACATION NO. 2600102, 44TH STREET
TENTATIVE MAP – PROJECT NO. 621697.

WHEREAS, Three Arch Capital Management, a California Limited Liability Corporation, Subdivider, and The Altum Group, Engineer, submitted an application with the City of San Diego for Tentative Map No. 2600103 (Map) and Easement Vacation No. 2600102 for the creation of four condominium units within two existing 2-story, 3,050-square-foot residential buildings with four dwelling units, vacation of a public sewer easement, and waiver of the requirement to underground existing offsite overhead utilities; and

WHEREAS, the project site is located at 1008-1014 South 44th Street and is in the RM-2-5 Zone, San Diego Promise Zone, Airport Land Use Compatibility Zone, and the Parking Standards Transit Priority Area within the Southeastern San Diego Community Plan area (Community Plan); and

WHEREAS, the property is legally described as: the land referred to herein is situated in the County of San Diego, State of California, and is described as: Parcel 1: the north 80 feet of the east 126 feet of the south half of Lot 4 of Caruther's Addition being a subdivision of Lots 57, 58, 59, and 60 of Ex-Mission Lands, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 27, filed in the Office of the County Recorder of San Diego County, October 1, 1880; Parcel 2: an easement and right-of-way for ingress and egress for road and public utility purposes over the east 20 feet of the north half of the south half of Lot 4, Caruther's Addition, excepting therefrom the north 80 feet thereof and over the east

20 feet of the north 10 feet of the south half of the south half of said Lot 4 of Caruther's Addition, being a subdivision of Lots 57, 58, 59 and 60 of Horton's purchase of the Ex-Mission Lands, according to Map thereof No. 27, filed in the Office of the County Recorder of said San Diego County, October 1, 1880; and

WHEREAS, the Map proposes the subdivision of a 0.19-acre site into four residential condominium units and vacation of a public sewer easement; and

WHEREAS, a preliminary soils and geological reconnaissance report are waived by the City Engineer pursuant to Subdivision Map Act section 66491(a) and San Diego Municipal Code (Municipal Code) sections 144.0220(a) and 144.0220(b); and

WHEREAS, the subdivision is a condominium project as defined in California Civil Code section 4125 and filed pursuant to the Subdivision Map Act. The total number of condominium dwelling units is four (4); and

WHEREAS, the request to waive the undergrounding of existing overhead utilities has been determined to be appropriate pursuant to Municipal Code section 144.0242(c) in that the conversion involves a short span of overhead facility (less than a full block in length) and would not represent a logical extension to an underground facility; and

WHEREAS, on April 10, 2023, the San Diego City Council (City Council) considered Tentative Map No. 2600103 and Easement Vacation No. 2600102, including the waiver of the requirement to underground existing offsite overhead utilities, and pursuant to Municipal Code sections 125.0440, 125.0444, and 144.0240, 125.1040, and Subdivision Map Act section 66428, received for its consideration written and oral presentations, evidence having been submitted, and testimony having been heard from all interested parties at the public hearing, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; and

WHEREAS, under San Diego 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 City Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of San Diego, that it adopts the following findings with respect to Tentative Map No. 2600103:

1. The proposed subdivision and its design or improvement are consistent with the policies, goals, and objectives of the applicable land use plan.

The project consists of a subdivision to create four condominium units within two existing two-story, 3,050-square-foot residential duplex buildings. The units are vacant, have never been occupied and there is no new construction associated with the project. The Community Plan designates the project site for Medium Residential Density uses (15-29 dwelling units per acre), and the project is consistent with the prescribed density. The project supports a land use that is consistent with the Community Plan, and also complies with the Community Plan goal of providing a diverse mix of residential opportunities in the Southeastern community. Therefore, the subdivision and its design or improvement are consistent with the policies, goals and objectives of the applicable land use plan.

2. The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The existing duplex buildings were approved on March 21, 2022, under Project No. 1050021 and included payment of affordable housing in-lieu fees to comply with the City's Affordable Housing Inclusionary Regulations. The existing development conforms to the Multi-Residential use and density regulations of the underlying RM-2-5 Zone. The project conforms to subdivision regulations of SDMC Chapter 14, Article 4, Division 2, including Lot design and vehicular access. No deviations are requested. The project also qualifies for waiver of the requirement to underground existing offsite overhead utilities, because this conversion involves a short span (less than a full block in length) and would not represent a logical extension to an

underground facility, and is eligible pursuant to San Diego Municipal Code (SDMC) Section 144.0242(c)(1)(B). Therefore, the project complies with the applicable zoning and development regulations of the Land Development Code.

3. The site is physically suitable for the type and density of development.

The existing duplex buildings were approved on March 21, 2022, under Project No. 1050021. There is no new development or increase in density associated with this approval. The Community Plan designates the project site for Medium Residential Density uses (15-29 dwelling units per acre), and the project is consistent with the prescribed density. Therefore, the site is physically suitable for the type and density of development requested.

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.

The project site is developed and does not contain any sensitive biological resources nor is it within or adjacent to Multiple Habitat Planning Area lands. The project is exempt from California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) and 15305 (Minor Alterations in Land Use Limitations). Therefore, 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.

5. The design of the subdivision or the type of improvements will not be detrimental to the public health, safety, and welfare.

The project consists of a subdivision to create four condominium units within two existing two-story, 3,050-square-foot residential duplex buildings. The units are vacant, have never been occupied and there is no new construction associated with the project. The project complies with the underlying RM-2-5 Zone and with Tentative Map regulations pursuant to SDMC Chapter 12, Article 5, Division 4, and SDMC Chapter 14, Article 4, Division 2. The project also requests a waiver to underground the existing offsite overhead utilities and is eligible per SDMC Section 144.0242(c)(1)(B).

The permit for the project includes specific requirements to ensure compliance with the regulations of the Land Development Code, including those adopted to protect the public health, safety and welfare. Project conditions include requiring a dedication of 10-foot curb to property-line distance along 44th Street; reconstructing the existing driveway adjacent to the site on South 44th Street to current City Standards; and obtaining an Encroachment Maintenance Removal Agreement for the private connections to public storm drain systems along the public right-of-way (ROW). Therefore, the design of the subdivision and type of improvement 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.

The subdivision includes a public sewer easement vacation. The existing public sewer easement (Recorded May 25, 1983 per Resolution No. 258412) to be vacated has been determined to no longer be needed for public purposes due to the configuration of the existing buildings and since a new private sewer line (approved under Project No. 1050021) was installed to serve the project site. Therefore, vacation of the public sewer easement will not conflict with public infrastructure 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.

The project consists of a subdivision to create four condominium units within two existing two-story, 3,050-square-foot residential duplex buildings. There is no new construction associated with the project. Each existing unit is exposed on two sides (north and south) to provide passive cooling through cross-ventilation of the interior spaces. The existing structures also provide for passive or natural heating and cooling opportunities through site orientation, architectural design, and the placement of plant materials. Therefore, the design of the proposed subdivision provides, to the extent feasible, for 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.

The proposed project to create four condominium units within two existing residential duplex buildings will not adversely impact public resources. The project supports a land use that is consistent with the Community Plan and also complies with the Community Plan goal of providing a diverse mix of residential opportunities in the Southeastern community. The decision maker has reviewed the administrative record, including the project plans, environmental documentation and public testimony to determine the effects of the proposed subdivision on the housing needs of the region, and determined that the subdivision to create four condominium units will result in a more desirable project consistent with the General Plan Housing Element.

Therefore, the decision maker has considered the effects of the proposed subdivision on the housing needs of the region and those needs were balanced against the needs for public services.

BE IT FURTHER RESOLVED, that portions of an existing 15-foot wide sewer easement, located within the project boundaries as shown in Easement Vacation No. 2600102, shall be vacated, contingent upon the recordation of the approved Parcel Map for the project, and that the following findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference:

9. There is no present or prospective public use for the easement, either for the facility or purpose for which it was originally acquired or for any other public use of a like nature that can be anticipated.

The 15-foot-wide public sewer easement to be vacated was recorded on May 25, 1983, Resolution No. 258412. This public sewer easement is no longer needed due to the configuration of the of the existing buildings and since a new private sewer line (approved under Project No. 1050021) was installed to serve the project site. Given the new private sewer line constructed, there is no present or prospective public use for this public sewer easement, either for the facility or purpose for which it was originally acquired or for any other public use of like nature that can be anticipated.

10. The public will benefit from the action through improved utilization of the land made available by the vacation.

The public sewer easement has been determined not to be needed for public purposes. The City controls and is liable for an area that cannot be used for public purposes. The public will benefit from the action by allowing the property owner to improve their property and reduce the area of public easement on private property, thereby reducing the City's liability. Because the sewer easement was determined not to be needed for public purposes, it is in the public interest to vacate the easement and transfer responsibility to the property owner. Therefore, the public will benefit from the action through improved utilization of the land made available by the vacation.

11. The vacation is consistent with any applicable land use plan.

The project consists of a subdivision to create four condominium units within two existing two-story, 3,050-square-foot residential duplex buildings. The units are vacant and there is no new construction associated with the project. The Community Plan designates the project site for Medium Residential Density uses (15-29 dwelling units per acre), and the project is consistent with the prescribed density. The project supports a land use that is consistent with the Community Plan and also complies with the Community Plan goal of providing a diverse mix of residential opportunities in the Southeastern community. The sewer easement has been determined not to be needed for public purposes and is no longer needed in light of the construction of the new private sewer line. Therefore, the proposed subdivision and easement vacation are consistent with any applicable land use plan and does not adversely affect the applicable land use plan.

12. The public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the vacation or the purpose for which the easement was acquired no longer exists.

The 15-foot-wide public sewer easement to be vacated was recorded on May 25, 1983, Resolution No. 258412. This public sewer easement is no longer needed due to the configuration of the of the existing buildings and since a new private sewer line (approved under Project No. 1050021) was installed to serve the project site. It has been determined the public sewer easement is no longer needed for public purpose. Therefore, public facility or purpose for which the easement was originally acquired will not be detrimentally affected by the vacation or the purpose for which the easement was acquired no longer exists.

BE IT FURTHER RESOLVED, that based on the Findings in this Resolution adopted by the City Council , Tentative Map No. 2600103 and Easement Vacation No. 2600102, including the waiver of the requirement to underground existing offsite overhead utilities, is hereby granted to Three Arch Capital Management, a California Limited Liability Corporation, subject to the attached conditions which are made a part of this resolution by this reference.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Lauren N. Hendrickson
Deputy City Attorney

LNH:nsf:cm
February 13, 2023
Or.Dept: Development Services
Doc. No. 3219056_2

Attachment: Conditions for Tentative Map No. 2600103 and Easement Vacation No. 2600102

CITY COUNCIL
CONDITIONS FOR TENTATIVE MAP NO. 2600103
44TH STREET TENTATIVE MAP - PROJECT NO. 621697
ADOPTED BY RESOLUTION NO. 314697 ON ~~APR 10~~ 2023

GENERAL

1. This Tentative Map will expire April 11, 2026.
2. Compliance with all of the following conditions shall be completed and/or assured, to the satisfaction of the City Engineer, prior to the recordation of the Parcel Map unless otherwise noted.
3. A Parcel Map shall be recorded in the Office of the San Diego County Recorder, prior to the Tentative Map expiration date.
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 the City and/or any Indemnified Parties 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 promptly notify the Subdivider of any claim, action, or proceeding, or if the City fails to cooperate fully in the defense, Subdivider shall not thereafter be responsible to defend, indemnify, or hold City and/or any Indemnified Parties harmless. City may participate in the defense of any claim, action, or proceeding if City bears its own attorney's fees and costs, City defends the action in good faith, and Subdivider is not required to pay or perform any settlement unless such settlement is approved by the Subdivider.

ENGINEERING

5. The Subdivider shall dedicate a 10-foot curb to property line distance along 44th Street per the Exhibit 'A', satisfactory to the City Engineer.
6. The Subdivider shall comply with previously approved Right-of-Way (ROW) Permit No. 2430522, satisfactory to the City Engineer.
7. The Subdivider shall reconstruct the existing driveway to current City Standard (maximum width of 16 feet) adjacent to the site on 44th Street.
8. The Subdivider shall obtain an Encroachment Maintenance Removal Agreement for the private connections to public storm drain systems along the 44th Street public ROW, satisfactory to the City Engineer.

MAPPING

9. The easements shown on the Tentative Map exhibit will be vacated pursuant to section 66434(g) of the Subdivision Map Act.

10. Prior to the recordation of the Parcel Map, all conditions in the Tentative Map resolution must be satisfied.
11. Prior to the recordation of the Parcel Map, taxes must be paid or bonded for this property pursuant to Section 66492 of the Subdivision Map Act. A current original tax certificate, recorded in the Office of the San Diego County Recorder, must be provided to satisfy this condition. If a tax bond is required as indicated in the tax certificate, ensure that the bond is paid or posted at the County Clerk of the Board of Supervisors Office and supply proof prior to the recordation of the Parcel Map
12. All subdivision maps within the City of San Diego are required to be tied to the California Coordinate System of 1983 (CCS83) Zone 6, pursuant to section 8801 through 8819 of the California Public Resources Code.
13. 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 meridian (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 First Order accuracy. 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 shall be shown on the map.
14. The Parcel Map shall be based on a field survey and all lot corners must be marked with durable survey monuments pursuant to Section 144.0311(d) of the City of San Diego Land Development Codes and Subdivision Map Act Section 66495. All survey monuments shall be set prior to the recordation of the Parcel Map, unless the setting of monuments is deemed impractical due to the proposed improvements and/or grading associated with the project, in which case delayed monumentation may be applied on the Parcel Map in accordance with Section 144.0130 of the City Land Development Codes.

WATER AND SEWER DEVELOPMENT

15. Prior to the issuance of any construction permits, if determined during the building permit review process that the existing water and sewer service will not be adequate to serve the proposed project, the Owner/Permittee shall assure by permit and bond the design and construction of new water and sewer services outside of any driveway or drive aisle, including the abandonment of any existing unused water and sewer services within the public ROW adjacent to the project site, satisfactory to the Public Utilities Director and the City Engineer.

16. The Subdivider shall apply for a plumbing permit for the installation of appropriate private back flow prevention devices (BFPDs) on each water service (domestic, fire and irrigation), satisfactory to the Public Utilities Director and the City Engineer. The BFPDs shall be located above ground on private property, in line with the service and immediately adjacent to the public ROW.
17. All proposed private water and sewer facilities shall be designed to comply with the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check.
18. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer facilities and five feet of any water facilities.

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), 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 San Diego City Clerk pursuant to Government Code sections 66020 and/or 66021.
- Where in the course of development of private property, public facilities are damaged or removed, the Subdivider shall at no cost to the City, obtain the required permits for work in the public ROW, and repair or replace the public facility to the satisfaction of the City Engineer (San Diego Municipal Code Section 142.0607.)

Internal Order No. 11004543

Passed by the Council of The City of San Diego on APR 10 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 10 2023.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California.

By Kyrrell Medina, Deputy

Office of the City Clerk, San Diego, California

314697

Resolution Number R-_____